EVIDENCE MEMORANDUM

EXHIBIT N

REPORTER TRANSCRIPT

APPEAL

VOL. 4

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF AND RESPONDENT vs. JAMES H. CUNNINGHAM, DEFENDANT AND APPELLANT.	CASE NO. SCE243538 COURT OF APPEAL NO. D046320

COPY

FROM SAN DIEGO COUNTY
HON. WILLIAM J. MCGRATH, JUDGE

REPORTER'S TRANSCRIPT ON APPEAL
JANUARY 10, 2005
VOLUME 4
PAGES 401 THROUGH 412/450

A P P E A R A N C E S:

FOR THE PLAINTIFF AND RESPONDENT: BILL LOCKYER, ATTORNEY GENERAL, 110 WEST A STREET, SAN DIEGO, CALIFORNIA

FOR THE DEFENDANT AND APPELLANT: DEFENDANT IN PROPRIA PERSONA

LORI R. OZBUN, CSR NO. 12838
PRO TEM REPORTER
SAN DIEGO SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

EAST COUNTY DIVISION

DEPARTMENT 9 HON. WILLIAM J. MCGRATH

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF, VS. JAMES H. CUNNINGHAM DEFENDANT.	SCE 243538 DA MAK333 PAGES 401-412/450

COPY

JANUARY 10, 2005

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PAGES 401 THROUGH 412/450

A P P E A R A N C E S:

FOR THE PEOPLE: BONNIE DUMANIS
DISTRICT ATTORNEY
BY: DAN F. LINK
DEPUTY DISTRICT ATTORNEY

FOR THE DEFENDANT: OFFICE OF THE PUBLIC DEFENDERS
BY: STACY D. GULLEY
DEPUTY PUBLIC DEFENDER

LORI R. OZBUN, CSR NO. 12838
PRO TEM REPORTER
EAST COUNTY REGIONAL CENTER

MONDAY, JANUARY 10, 2005; EL CAJON, CALIFORNIA, 8:44 A.M.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: WE'RE BACK ON THE RECORD IN THE MATTER OF PEOPLE VERSUS JAMES CUNNINGHAM. I SEE THAT MR. LINK IS PRESENT. HOWEVER, NOBODY FROM THE DEFENSE SIDE IS, YET.

MR. LINK, ARE THE PEOPLE PREPARED TO PROCEED WITH THE TRIAL AND THE PRIORS AT THIS TIME?

MR. LINK: YES, YOUR HONOR.

THE COURT: OKAY. WE HAVE ONE OTHER MATTER THAT WE CAN TAKE CARE, AND THIS WOULD BE THE MATTER INVOLVING A JUROR IN THIS CASE, AND THAT IS BRANDY ROBERTS.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT OUTSIDE THE PRESENCE OF THE JURY AND COUNSEL.)

THE COURT: MS. ROBERTS, LET ME ASK YOU TO STEP FORWARD, IF YOU WOULD PLEASE, AND HAVE A SEAT AT THIS TABLE. AND IF YOUR MOTHER IS WITH YOU AND YOU'D LIKE TO HAVE HER HERE, SHE CAN COME UP, AS WELL.

MS. ROBERTS, THE REASON I'VE ORDERED YOU TO BE IN HERE THIS MORNING IS -- I THINK YOU KNOW WHY. I BECAME AWARE THAT YOU WERE CALLED FOR JURY DUTY -- ACTUALLY ON THE TRIAL THAT WE'RE STILL DEALING WITH TODAY, PEOPLE VS. CUNNINGHAM. AND I BELIEVE YOU WERE CALLED TO THE JURY CONFERENCE ROOM LAST TUESDAY MORNING. AND YOU WERE ORDERED OR DIRECTED TO COME TO THIS

COURTROOM FOR TRIAL. AND AS PART OF A GROUP OF 42 PEOPLE, 41 PEOPLE SHOWED UP, BUT YOU DID NOT.

WHEN I CALLED THE JURY CLERK'S OFFICE, I WAS GIVEN INFORMATION THAT THEY SENT YOU UP HERE AND DIDN'T KNOW WHAT HAPPENED TO YOU. SO IT APPEARS TO THE COURT THAT YOU EXCUSED YOURSELF WITHOUT CHECKING IN WITH ANYONE, AND SIMPLY LEFT THE BUILDING. I HAD MY CLERK OBTAIN YOUR PHONE NUMBER AND CALL THAT NUMBER THAT VERY DAY, LATER IN THE EVENING, I BELIEVE -- OR LATER IN THE AFTERNOON. AND A VOICE MAIL MESSAGE WAS LEFT -- OR A MALE ANSWERED THE PHONE AND SAID YOU WERE SLEEPING.

AT SOME POINT, YOU GOT IN TOUCH WITH MY CLERK BY PHONE, AND I WAS INFORMED THAT -- WELL, YOU WERE ORDERED TO RETURN TO THE COURTROOM THE FOLLOWING MORNING. THE CLERK TOLD YOU THAT I HAD ORDERED THAT, AND YOU SAID THAT YOU HAD TO GO TO WORK, AND, WHAT WOULD HAPPEN IF YOU DIDN'T SHOW UP? AND THE CLERK SAID, "WELL, IF YOU WERE SICK OR COULDN'T SHOW UP FOR SOME REASON, THEN, YOU WOULD BE ORDERED TO COME BACK THE FOLLOWING MORNING AFTER THAT." AND YOU DID NOT COME BACK THE FOLLOWING MORNING, JANUARY 5TH, AND WE HADN'T HEARD FROM AGAIN. SO I SENT A SHERIFF OUT TO EITHER ARREST YOU OR SERVE YOU WITH A WARRANT AND ATTACHMENT TO OBTAIN YOUR AGREEMENT THAT YOU WOULD COME IN. AND I'M HAPPY TO SEE YOU THIS MORNING.

SO, MS. ROBERTS, I'M PLANNING TO CITE YOU FOR CONTEMPT OF COURT BASED ON THE FACTS THAT I HAVE JUST RECITED. BUT BEFORE DOING SO, I WOULD LIKE TO GIVE YOU AN OPPORTUNITY, IF YOU WISH, TO RESPOND OR TO TELL ME

YOUR SIDE OF THE STORY.

MS. ROBERTS: NO. I THINK THERE WAS A LOT OF CONFUSION IN THAT DAY. NOT EXCUSING WHAT I DID, BUT WHEN I WOKE UP THAT MORNING -- 5:00 IN THE MORNING, I VOMITED. I FELT TERRIBLE. I WENT BACK TO SLEEP, GOT UP, STILL CAME HERE, CHECKED IN WITH EVERYBODY, LISTENED TO -- I THOUGHT IT WAS YOU, BUT I GUESS NOT, SAID THAT -- AND I'VE NEVER BEEN HERE BEFORE. THAT IT WAS A LIGHT CASE LOAD. I'M NOT REALLY SURE HOW IT WORKS OR WHAT YOU DO, BUT EVERYBODY WOULD PROBABLY BE LEAVING AT 11:30, MAYBE 12:00, SOMETHING ABOUT THERE BEING 300 PEOPLE HERE.

WHEN THE WOMAN CAME UP TO SPEAK, SHE SAID THAT IF YOU PARKED ANYWHERE BUT THE PARKING STRUCTURE, THAT YOU WERE IN THE WRONG SPOT. SO WHEN I LEFT OVER AT MOTO WORLD -- WHEN I LEFT TO GO MOVE MY CAR, I STILL FELT MISERABLE. I SAT IN THE CAR. I FELT MISERABLE, SO I WENT HOME, WENT TO SLEEP. I WAS ACTUALLY GOING TO CALL, BUT I TURNED IN MY SUMMONS WITH THE PHONE NUMBER.

THE COURT: YOU WENT HOME AND WENT TO SLEEP -- YOU WENT TO WHAT? MOVE YOUR CAR?

MS. ROBERTS: OH, SHE SAID IF YOU WEREN'T IN THE PARKING STRUCTURE, THEN, YOU'RE IN THE WRONG SPOT.

THE COURT: WERE YOU AWARE THAT YOU WERE DIRECTED TO THIS COURTROOM, TO DEPARTMENT 9?

MS. ROBERTS: NEVER.

THE COURT: OKAY. YOU WERE NEVER AWARE OF THAT.

MS. ROBERTS: NEVER AWARE OF THAT. SHE JUST SAID, "IF YOU WEREN'T -- IF YOU WERE IN ANY OTHER SPOT, THEN, YOU WERE IN THE WRONG SPOT." SO THAT'S WHEN I WALKED OVER. I WAS ALL THE WAY OVER BY MOTO WORLD IN A TWO-HOUR PARKING, AND I SAT IN THE CAR. SHE SAID THAT WE WERE ON LIKE A 35-MINUTE BREAK. I SAT IN THE CAR. I JUST FELT MISERABLE, SO I WENT HOME AND WENT TO SLEEP. THEN, THAT'S WHERE -- WHEN THE CONFUSION GETS IN BECAUSE I CALLED BACK AND I SPOKE TO GINA, AND I SAID, I WASN'T FEELING WELL. AND SHE SAID SHE WOULD TRANSFER ME INTO THE COURTROOM. AND, THEN, THERE WAS A WOMAN WHISPERING. AND I SAID, "CAN'T YOU PLEASE SEND ME ANOTHER SUMMONS AT ANOTHER TIME?" BECAUSE I WAS ACTUALLY INTERESTED IN GOING BECAUSE I HAD NEVER BEEN HERE. AND THEN SHE TRANSFERRED ME BACK TO GINA.

AND GINA SAID, "I'LL TRY TO GET YOU ANOTHER SUMMONS BECAUSE IF YOU WANT TO COME BACK TO TOMORROW -- YOU'RE SICK."

I SAID, "YEAH, I'M SICK. I'VE BEEN SICK FOR A WHILE."

SO SHE SAID SHE'LL TRY TO GET ME ANOTHER SUMMONS, AND THAT SHE WOULD CALL ME BACK PROBABLY NOT THAT NIGHT, BUT THE NEXT DAY. THEN, NOBODY EVER CALLED ME BACK UNTIL MY FATHER -- THE POLICE WENT TO THEIR HOUSE THAT NIGHT TO COME GET ME.

THE COURT: IS IT YOUR TESTIMONY, MS. ROBERTS, THAT THE WOMAN WHO WAS WHISPERING NEVER TOLD YOU THAT YOU HAD TO COME BACK TO COURT THE FOLLOWING MORNING?

MS. ROBERTS: SHE SAID, "THE JUDGE WOULD LIKE YOU TO COME BACK ON THE NEXT DAY." SO WHEN I SPOKE TO

GINA AND SAID, "I FEEL MISERABLE. IF I DON'T FEEL GOOD IN THE MORNING --

SHE SAID, "WELL, YEAH. IF YOU'RE SICK, YOU'RE SICK. I'LL TRY TO GET YOU ANOTHER SUMMONS."

THE COURT: IS IT YOUR TESTIMONY THAT THE WOMAN THAT WAS WHISPERING, DID OR DID NOT DIRECT YOU TO COME BACK TO COURT THE NEXT DAY?

MS. ROBERTS: SHE SAID SHE "WANTED" ME TO COME BACK THE FOLLOWING DAY.

THE COURT: ALL RIGHT. AND YOU DID NOT COME BACK THE FOLLOWING DAY; IS THAT CORRECT?

MS. ROBERTS: NO. BECAUSE I, THEN, SPOKE TO GINA, WHICH I WAS ASSUMING WAS IN CHARGE OF THE -- SHE'S THE ONE WHO LEFT THE MESSAGES. SHE'S THE ONE WHOSE NUMBER I HAD TO CONTACT. SHE'S THE ONE WHO SAID SHE WOULD CALL ME BACK.

THE COURT: AFTER THE WOMAN WHO WAS WHISPERING SAID THAT THE JUDGE WANTED YOU BACK THE FOLLOWING DAY, YOU, THEN, SPOKE TO GINA?

MS. ROBERTS: UH-HUH.

THE COURT: DID GINA SAY YOU DIDN'T HAVE TO COME BACK THE FOLLOWING DAY?

THE WITNESS: SHE SAID SHE WOULD TRY TO GET ME ANOTHER SUMMONS AT THE ANOTHER TIME. SHE WOULD TRY TO SPEAK TO YOU EITHER THE NEXT NIGHT OR THE NEXT MORNING BECAUSE SHE WASN'T SURE THAT -- IF YOU WOULD BE IN COURT THE REST OF THE DAY.

THE COURT: WELL, I DIRECTED THE CLERK, WHO WAS

THE WOMAN WHO WAS WHISPERING, TO YOU TELL YOU, IN NO UNCERTAIN TERMS, THAT YOU WERE TO COME BACK TO MY COURTROOM THE FOLLOWING MORNING. I WAS TOLD BY THE CLERK THAT YOU INDICATED THAT YOU HAD A JOB THAT DIDN'T PAY YOU WHILE YOU HAD JURY SERVICE, AND, WHAT WOULD HAPPEN TO YOU IF YOU DID NOT COME BACK?

DO YOU REMEMBER THAT CONVERSATION?

MS. ROBERTS: I WAS ASKING HER ABOUT -- I'M STILL UNSURE WITH MY JOB. THEY STILL HAVE NOT EXPLAINED TO ME WHAT, IN FACT, THEY DO FOR YOU. I TOLD HER I WASN'T FEELING WELL. I'M NOT SURE HOW IT WORKS AT MY WORK -- IF I GET PAID FOR IT, IF I WAS TO BE CALLED ON A CASE THE NEXT DAY OR THE FOLLOWING DAY.

THE COURT: WHAT KIND OF JOB DO YOU HAVE?

MS. ROBERTS: I WORK AT VONS, THE GROCERY STORE.

THE COURT: I BELIEVE VONS WILL PAY YOU FOR FIVE DAYS IF YOU'RE AN A VONS EMPLOYEE.

MS. ROBERTS: BUT THAT'S FOR 40 HOURS. THAT WOULD BE FOR A FULL-TIME EMPLOYEE.

THE COURT: WELL, OKAY. A COUPLE THINGS COME TO IN MIND. NUMBER 1, I'M PREPARED TO CALL THE CLERK IN, QUESTION HER UNDER OATH TO HAVE HER TESTIFY AS TO WHAT SHE TOLD YOU, AND WHAT YOU WERE DIRECTED TO DO. I DON'T THINK THIS WILL BE NECESSARY BECAUSE YOU HAVEN'T DENIED THAT YOU WERE ORDERED TO RETURN TO COURT THE FOLLOWING MORNING BY THE COURT WHEN I ASKED YOU. AND IN RESPONSE TO THAT ORDER, YOU INDICATED THAT YOU HAD TO GO TO WORK, AND WHAT WOULD HAPPEN IF YOU DIDN'T COME BACK?

I THINK YOU MADE A CONSCIOUS DECISION, SIMPLY, NOT TO COME BACK. AND I'M NOT SURE WHY, BUT YOU DIDN'T. AND UNTIL I SENT THE SHERIFF OUT TO BRING YOU IN HERE, I WOULD NEVER HAVE SEEN YOU AGAIN, IN MY OPINION, THE EASY WAY.

NOW, THE OTHER THING THAT COMES TO MIND IS THAT IF YOU HAVE A HARDSHIP REGARDING FINANCES, OR WHAT HAVE YOU. BELIEVE ME. YOU'RE NOT THE ONLY PERSON OUT OF THOSE 300 PEOPLE DOWNSTAIRS WHO HAS THAT HARDSHIP. 42 PEOPLE WERE ORDERED TO THIS COURTROOM. 41 SHOWED UP. SEVERAL HAD HARDSHIPS. SEVERAL WERE SICK. SOME WERE SO SICK, OR HAD SUCH A HARDSHIP THAT ONCE THEY GOT HERE, THEY WERE EXCUSED.

YOU TOOK IT UPON YOURSELF, IN MY VIEW -- FROM WHAT I'VE HEARD, TO GO OUT TO YOUR CAR AND JUST LEAVE WITHOUT GETTING ANYONE'S PERMISSION. YOU JUST TOOK OFF. AND IT'S NOT THE APPROPRIATE WAY TO HANDLE THE SITUATION. JURY DUTY IS A DUTY. YOU WERE COMPELLED TO BE HERE, AND YOU'RE NOT FREE TO JUST LEAVE WHEN YOU FEEL LIKE, WHETHER YOU'RE SICK OR YOU HAVE A JOB TO GO TO.

I AM GOING TO FIND YOU IN CONTEMPT OF COURT FOR YOUR ACTIONS, MS. ROBERTS. AND I INTEND TO IMPOSE A FINE, PLUS, ORDER THAT YOU PAY THE COST OF SERVICE OF THE PROCESS ON YOU FOR SENDING THE SHERIFF OUT TO BRING YOU IN HERE. YOU'RE GOING BE TO GIVEN A FINE OF $100. YOU'RE GOING TO BE ORDERED TO PAY $50 TO THE SHERIFF'S DEPARTMENT. IF YOU CANNOT PAY THOSE FUNDS, YOU'D BE GIVEN UP TO A WEEK OR TWO TO PAY THEM.

AND FINALLY, YOU'RE GOING TO BE ORDERED TO REPORT FOR JURY SERVICE ON THE DATE OF YOUR CHOOSING IN THE TWO WEEKS. YOU CAN REMAIN TODAY IF YOU WANT BECAUSE YOU'RE ALREADY HERE, BUT YOU WILL HAVE TO GO THROUGH WITH ONE DAY OF JURY SERVICE. YOU WILL HAVE TO STAY DOWN THERE UNTIL YOU'RE RELEASED JUST LIKE EVERYONE ELSE, AND THAT WILL BE THE END OF THAT.

DO YOU UNDERSTAND THAT AND AGREE WITH THESE SANCTIONS?

MS. ROBERTS: YES.

THE COURT: NOW, YOU'RE GOING OWE $100 TO THE SAN DIEGO SUPERIOR COURT. THIS IS A SANCTION FOR YOUR ACTIONS. $50 TO THE COUNTY SHERIFF'S DEPARTMENT FOR THE SERVICE OF PROCESS TO YOU TO GET YOU IN HERE.

ARE YOU ABLE TO PAY THOSE FUNDS?

MS. ROBERTS: YES.

THE COURT: OKAY. YOU WILL BE DIRECTED TO GO DOWN TO COURT-ORDER PROCESSING TODAY.

DEPUTY WAITE, SHOULD SHE GO DIRECTLY TO THE SHERIFF'S DEPARTMENT TO PAY THE $50 FOR THE SERVICE OR --

THE BAILIFF: I NEVER DEALT WITH THIS, YOUR HONOR. I'D HAVE TO MAKE SOME PHONE CALLS.

THE COURT: WHY DON'T YOU CALL THE SHERIFF'S DEPARTMENT DOWN ON THE GROUND FLOOR. TELL THEM THAT MS. ROBERTS WILL BE SHOWING UP WITHIN THE NEXT HALF HOUR, AND THAT SHE'LL BE PAYING $50 FOR HER SERVICE OF THE WARRANT OF ATTACHMENT, JUST SO THEY KNOW SHE'S COMING.

SO $100 TO THE COURT. $50 DOWN TO THE SHERIFF.

AND AS FAR AS YOUR JURY SERVICE GOES, LIKE I SAID, YOU CAN PICK OUT A DATE AND TIME WITHIN THE NEXT TWO WEEKS FOR YOU TO REPORT TO JURY SERVICE. WOULD YOU LIKE TO DO THAT TODAY, OR WOULD YOU LIKE TO COME BACK ON A DIFFERENT DAY?

MS. ROBERTS: IT'S 4:30?

THE COURT: WELL, THEY MAY RELEASE YOU AT 11:30 IF THERE'S NO TRIALS TO GO OUT. YOU NEVER KNOW FOR SURE. YOU COULD BE RELEASED SOMETIME THIS MORNING. YOU MIGHT GET SENT TO A COURTROOM WITH A CASE YOU WILL HAVE TO GO. AND IF YOU'RE SENT TO A COURTROOM, THEY MAY KEEP YOU FOR THE WHOLE DAY, AND THAT, THEY MAY WANT YOU TO.

MS. ROBERTS: OKAY. I'LL DO IT TODAY.

THE COURT: OKAY. MA'AM CLERK, WOULD YOU PLEASE CALL THE JURY CLERK'S OFFICE. TELL THEM THAT MS. ROBERTS WILL BE DOWN THERE TO CHECK IN IMMEDIATELY, AND THEN SHE'LL NEED TO BE RELEASED TO GO TO COURT-ORDER PROCESSING, PAY HER MONEY, GO TO THE SHERIFF'S DEPARTMENT, PAY THE MONEY AND, THEN, SHE'LL BE BACK TO THE JURY CLERK'S OFFICE. WE'LL LET THE JURY CLERK KNOW THAT SHE'S ON HER WAY.

YOUR FIRST JOB IS TO GO DOWN TO THE JURY LOUNGE. YOU KNOW WHERE THAT IS. IT'S DOWN ON THE GROUND FLOOR. YOU CHECK IN WITH GINA, LET HER KNOW YOU'RE THERE. AND THEN WE'LL LET HER KNOW THAT YOU'RE GOING TO PAY YOUR FINES, AND TO THE SHERIFF'S DEPARTMENT TO PAY THAT FEE, AND THEN BACK TO THE JURY LOUNGE FOR YOUR JURY SERVICE.

MS. ROBERTS: SO THE SHERIFF'S DEPARTMENT IS NOT

IN HERE?

THE COURT: YEAH. IT'S NOT IN THE BUILDING. IT'S ON THE GROUND FLOOR. THE DEPUTY WILL TELL YOU WHERE TO GO. YOU'RE ALL SET.

MS. ROBERTS: THANK YOU, JUDGE.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD IN THE MATTER OF PEOPLE VS. JAMES CUNNINGHAM. PRESENT ARE MR. LINK, MR. CUNNINGHAM AND MR. GULLEY. THIS IS A TRIAL ON THE VALIDITY OF THE PRIORS. WE'LL BE PROCEEDING. MR. LINK?

MR. LINK: AT THIS POINT, PEOPLE ARE READY.

THE COURT: MR. GULLEY?

MR. GULLEY: YOUR HONOR, I SPOKE TO MR. CUNNINGHAM. HE'S GOING TO WAIVE HIS RIGHT TO A TRIAL. HE'S PREPARED TO ADMIT THE PRIOR 211 FROM 1983.

THE COURT: '83, YOU THINK?

MR. GULLEY: YEAH.

THE COURT: MR. CUNNINGHAM, YOU HAVE A RIGHT TO HAVE A TRIAL TO DETERMINE WHETHER OR NOT IT WAS YOU WHO SUFFERED THE PC 211 ROBBERY CONVICTION FROM 1983 THAT'S ALLEGED BOTH AS A SERIOUS FELONY PRIOR AND A STRIKE PRIOR. THE SAME CRIME ALLEGED IN TWO DIFFERENT WAYS.

IT'S MY UNDERSTANDING THAT YOU WISH TO WAIVE YOUR RIGHT TO HAVE YOUR TRIAL AND SIMPLY ADMIT THAT THAT WAS YOU AND THAT IS YOUR CASE. IS THAT TRUE?

THE WITNESS: YEAH -- YES.

THE COURT: OKAY. YOU HAVE THE RIGHT TO A PUBLIC AND SPEEDY TRIAL ON THAT ISSUE. YOU HAVE THE RIGHT TO CONFRONT AND TO CROSS-EXAMINE THE WITNESSES. YOU HAVE THE RIGHT TO SUBPOENA WITNESSES IN THE COURT, IF YOU MIGHT WISH TO. AND YOU HAVE THE RIGHT TO REMAIN SILENT.

IN ORDER FOR ME TO ACCEPT YOUR ADMISSION THAT THAT IS YOUR CASE, I'LL NEED, FIRST, FOR YOU TO WAIVE THOSE CONSTITUTIONAL RIGHTS THAT I JUST EXPLAINED TO YOU: YOUR RIGHT TO HAVE A TRIAL, YOU RIGHT TO REMAIN SILENT, ET CETERA.

DO YOU UNDERSTAND AND AGREE TO WAIVE THOSE RIGHTS AS TO THIS ISSUE?

THE DEFENDANT: YES, SIR.

THE COURT: AND DO YOU ADMIT THAT THE PC 211 CHARGE IS REPRESENTED BY COURT CASE NUMBER, CR64287, IS A CONVICTION THAT YOU SUFFERED IN 1983 FOR A PC 211, ROBBERY. AND YOU ADMIT THAT IT IS BOTH A SERIOUS FELONY PRIOR AND A STRIKE PRIOR.

IS THAT ALL TRUE?

THE DEFENDANT: YES.

THE COURT: OKAY. I'LL FIND THAT THE DEFENDANT HAS WAIVED HIS RIGHT TO A TRIAL ON THE PRIORS, AND HAS GIVEN A KNOWING, INTELLIGENT, EXPRESSED AND EXPLICIT WAIVER OF HIS CONSTITUTIONAL RIGHTS. AND HAS ADMITTED THAT THE ALLEGATIONS ARE TRUE AS ALLEGED PURSUANT TO PC667(A)(1) AND PC667(B)-(I).

AT THIS POINT, THE COURT IS PREPARED TO SET A

SENTENCING DATE EITHER WITHIN DEMAND TIME OR WITH A TIME WAIVER.

IT'S YOUR OPTION, MR. GULLEY. DEMAND TIME, WE'LL HAVE IT ON FEBRUARY 8TH, A TUESDAY, WHICH IS FINE WITH THE COURT.

MR. GULLEY: THAT WOULD BE FINE WITH US.

THE COURT: OKAY. TUESDAY, FEBRUARY 8TH, 2005, DEPARTMENT 9 FOR PROBATION HEARING AND SENTENCING. AND THAT WILL BE AT 1:30 P.M. IN DEPARTMENT 9, FEBRUARY 8TH.

THE DEFENDANT WILL BE HELD WITHOUT BAIL PENDING THAT HEARING.

ANYTHING FURTHER, MR. LINK?

MR. LINK: NO, YOUR HONOR.

THE COURT: OR MR. GULLEY?

MR. GULLEY: NO, YOUR HONOR.

THE COURT: OKAY. WE'LL BE IN RECESS UNTIL THEN.

(THE PROCEEDINGS ARE CONCLUDED.)

SAN DIEGO, CALIFORNIA)
) SS.
COUNTY OF SAN DIEGO)

I, LORI R. OZBUN, CERTIFIED SHORTHAND REPORTER, A PER DIEM REPORTER OF THE SUPERIOR COURT, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DO HEREBY CERTIFY:

THAT I REPORTED IN SHORTHAND THE PROCEEDINGS HELD IN THE FOREGOING CAUSE ON JANUARY 10, 2005; THAT MY NOTES WERE LATER TRANSCRIBED INTO TYPEWRITING UNDER MY DIRECTION; THAT THE FOREGOING PAGES, 401 THROUGH 412 CONTAINS A CORRECT STATEMENT OF THE PROCEEDINGS.

DATED JUNE 6, 2005

LORI R. OZBUN
CERTIFIED SHORTHAND REPORTER #12838

EVIDENC MEMORANDUM

EXHIBIT "O"

REPORTER'S TRANSCRIPT

VOL #3

"O"

COURT OF APPEAL -- STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

PEOPLE OF THE STATE OF CALIFORNIA	FROM SAN DIEGO COUNTY
PLAINTIFF AND RESPONDENT,	HON. WILLIAM J. MCGRATH, JUDGE
VS.	
	APPEAL NO. D046320
JAMES CUNNINGHAM,	NO. SCE243538
DEFENDANT AND APPELLANT.	

REPORTER'S TRANSCRIPT ON APPEAL

JANUARY 6, 2005

SAN DIEGO, CALIFORNIA

VOL. 3

COPY

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APPEARANCES:

FOR THE PLAINTIFF AND RESPONDENT: BILL LOCKYER
ATTORNEY GENERAL
STATE OF CALIFORNIA
110 WEST A STREET
SAN DIEGO, CA. 92101

FOR THE DEFENDANT AND APPELLANT: JAMES CUNNINGHAM
IN PRO PER

REPORTED BY: IRENE PERKINS, CSR 12727

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO, EAST COUNTY DIVISION

DEPARTMENT 9 BEFORE HON. WILLIAM J. MCGRATH, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF, VS. JAMES CUNNINGHAM, DEFENDANT.	CASE NO. SCE243538

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JANUARY 6, 2005

APPEARANCES:

FOR THE PLAINTIFF: DAN LINK
DEPUTY DISTRICT ATTORNEY

FOR THE DEFENDANT: STACY GULLEY
DEPUTY PUBLIC DEFENDER

REPORTED BY: IRENE PERKINS, CSR NO. 12727
SAN DIEGO SUPERIOR COURT

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01/06/05 - VOL. 3

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EL CAJON, CALIFORNIA; THURSDAY, JANUARY 6, 2005; 9:08 A.M.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

THE COURT: WE'RE ON THE RECORD, PEOPLE VERSUS CUNNINGHAM. BOTH ATTORNEYS AND THE DEFENDANT ARE PRESENT. NO JURORS ARE PRESENT. AND MR. GULLEY HAS INFORMED US THAT HE WISHES TO CALL A SHERRY ROBBINS AS A WITNESS?

MR. GULLEY: CORRECT.

THE COURT: AND MR. LINK HAS EVIDENCED SOME WISH TO BE HEARD ON THAT ISSUE. I ASSUME YOU WANT SOME TYPE OF OFFER OF PROOF, OR DO YOU KNOW WHAT SHE'S GOING TO TESTIFY ABOUT?

MR. LINK: I SPOKE WITH MR. GULLEY. THEIR INVESTIGATOR WROTE A REPORT. I HAVE AN IDEA OF WHAT SHE'S GOING TO TESTIFY TO.

THE COURT: OKAY. WELL, LET'S GO RIGHT INTO YOUR OBJECTIONS, HOWEVER YOU WISH TO BE HEARD, ON WHAT SHE'S GOING TO SAY.

MR. LINK: CERTAINLY. THE MAIN OBJECTION IS GOING TO BE RELEVANCE, AND THE OTHER WOULD BE PREJUDICIAL. AS YOUR HONOR WAS STATING YESTERDAY, DEFENSE IS STARTING TO MAKE A BIG DEAL WITH MY WITNESSES, AND I THINK WITH THIS WITNESS AS WELL, THAT THERE WAS SOME TENSION BETWEEN THIS DEFENDANT AND CHRISTOPHER KNOX. THAT'S THE ONLY THING ESSENTIALLY THAT SHE'S GOING TO BE TESTIFYING TO, EXCEPT FOR THE FACT THAT, YOU KNOW, MR. CUNNINGHAM MAY BE A GOOD GUY AND SHE'S NEVER HAD ANY PROBLEM WITH HIM.

SHE WORKED AT THE COMPLEX AS A SECURITY GUARD TWO MONTHS BEFORE THIS INCIDENT. AND I DON'T KNOW HOW LONG SHE WORKED

THERE BEFORE THAT. BUT TWO MONTHS BEFORE, SHE'S GOING TO TESTIFY TO SOME INCIDENT BETWEEN MR. KNOX AND MR. CUNNINGHAM WHERE MR. KNOX CAME OUT WITH A BASEBALL BAT AND WAS YELLING AND THREATENING THE DEFENDANT. EVERYTHING ELSE IN HERE IS, ESSENTIALLY, HEARSAY, YOU KNOW, SHE HEARD SOMEONE ELSE SAY THIS, OR SHE SAW REBECCA KNOX WITH A LOT OF PEOPLE COMING IN AND OUT OF THE HOUSE, OR, YOU KNOW, SHE KNOWS THAT REBECCA KNOX HAS ALTERED CHECKS. ALL THAT EVIDENCE WOULDN'T COME IN.

SO IT APPEARS TO ME THAT THE ONLY THING THEY'RE TRYING TO GET IN AT THIS POINT WAS THAT THERE WAS SOME INCIDENT BETWEEN MR. KNOX AND THE DEFENDANT AT LEAST TWO MONTHS, IF NOT FURTHER IN TIME, PRIOR TO THIS PARTICULAR INCIDENT.

THE COURT: LET'S DO THIS. MR. GULLEY, WHY DON'T YOU GO AHEAD AND TELL ME -- I PROBABLY SHOULD HAVE DONE IT THIS WAY ANYWAY -- TELL ME WHAT YOU EXPECT MS. ROBBINS TO TESTIFY TO.

MR. GULLEY: YOUR HONOR, THE PEOPLE ARE CORRECT IN THAT SHE'S GOING TO TESTIFY ABOUT THE INCIDENT BETWEEN MR. KNOX AND MY CLIENT. THAT TIES IN WITH WHAT MY CLIENT TESTIFIES AND WHAT MR. CASTRO TESTIFIED TO WHEN HE WENT UP THERE WITH THE GUN. IT WASN'T TO ASSAULT ANYONE, BUT TO PROTECT HIMSELF FROM MR. KNOX AS HE WAS GETTING HIS PROPERTY BACK. THAT'S THE ONLY THING SHE'S GOING TO SAY.

THE COURT: NO GOOD CHARACTER EVIDENCE?

MR. GULLEY: SHE'S GOING TO SAY SHE KNEW MY CLIENT. NOT GETTING INTO CHARACTER, JUST TO SHOW MY CLIENT'S STATE OF MIND WHEN HE WENT UP INTO THIS APARTMENT.

MR. LINK: AS YOUR HONOR CLEARLY STATED YESTERDAY

AT THE CLOSE OF THE DAY, I'M NOT TRYING TO MAKE MR. KNOX OUT TO BE A VICTIM AT ALL. AND THE ONLY VICTIM HERE THAT I'M GOING TO TALK ABOUT IS MR. CASTRO. THIS WOULD BE IRRELEVANT.

THE COURT: WELL, I'VE THOUGHT ABOUT IT, AND I DEAL WITH IT THIS WAY. WHEN WAS THIS INCIDENT? IS SHE GOING TO TESTIFY SHE SAW KNOX WIELDING A BAT DURING AN ARGUMENT WITH YOUR CLIENT?

MR. GULLEY: CORRECT.

THE COURT: AND SHE WILL FURTHER TESTIFY THAT YOUR CLIENT WAS UNARMED?

MR. GULLEY: CORRECT.

THE COURT: AND THIS WOULD HAVE BEEN, WHAT, TWO MONTHS BEFORE SEPTEMBER 12TH OR THEREABOUTS?

MR. GULLEY: I DIDN'T SEE THE DATE IN MY REPORT. THE PEOPLE MAY HAVE SEEN IT, BUT I DIDN'T SEE IT. SHE HAD BEEN WORKING TWO MONTHS PRIOR TO THIS INCIDENT. I'M NOT SURE OF THE EXACT DATE.

THE COURT: EVEN THOUGH KNOX IS NOT ALLEGED TO BE A VICTIM, I FEEL UNDER THE CIRCUMSTANCES THIS IS CLEARLY RELEVANT EVIDENCE, AND I FEEL IT WOULD BE AN ABUSIVE DISCRETION TO DISALLOW IT, AND I'LL TELL YOU WHY. ONE OF THE CHIEF ISSUES ON COUNT 1 IS WHETHER OR NOT CUNNINGHAM WENT TO THE APARTMENT WITH THE INTENT TO COMMIT AN ASSAULT WITH THE GUN OR WHETHER HE WENT WITH THE GUN AS POSSIBLE PROTECTION FOR HIMSELF WHILE HE WAS ATTEMPTING TO RETRIEVE HIS PHONE. IF THERE WAS PRIOR INCIDENTS IN WHICH A BAT WAS YIELDED BY KNOX, AND IF THERE WAS EVIDENCE THAT KNOX KNEW THAT -- THAT CUNNINGHAM KNEW THAT KNOX WOULD BE IN THE APARTMENT, THEN

IT'S CERTAINLY ARGUABLE THAT CUNNINGHAM WENT THERE WITH THE INTENT TO HAVE THE GUN TO KEEP HIMSELF FROM GETTING HIT IN THE HEAD WITH A BAT, I SUPPOSE, AND I SUSPECT THAT'S THE DEFENSE THEORY. AND SINCE HIS INTENT IS CRUCIAL WHEN HE ENTERED THE APARTMENT, THEN THIS CLEARLY WOULD BE RELEVANT EVIDENCE, AND I BELIEVE IT TO BE ABUSIVE DISCRETION TO DISALLOW IT.

MR. LINK: EVEN THOUGH THE EVENT MAY BE 6 MONTHS OR A YEAR BEFORE?

THE COURT: SURE.

MR. LINK: OKAY.

THE COURT: I THINK SO. I MEAN, IF IT HAPPENED, IT CERTAINLY IS NOT SOMETHING THAT CUNNINGHAM IS GOING TO FORGET ABOUT. SO WE PUT IT ON AND LET BOTH SIDES ARGUE WHAT THEY WISH AND LET THE JURY DECIDE. BUT IT'S RELEVANT EVIDENCE.

NOW, THE OTHER ISSUE IS THIS, AND I WANT TO AIR THE -- I WANT TO MAKE SURE THAT WE'RE UNDERSTANDING IT BEFORE WE START GOING INTO THINGS THAT MIGHT GO DOWN ROADS THAT CERTAIN PEOPLE DON'T WANT TO GO DOWN. GOOD CHARACTER EVIDENCE, IF IT'S BROUGHT IN BY SOMEBODY LIKE ROBBINS, IS GOING TO OPEN THE DOOR TO BAD CHARACTER EVIDENCE THAT THE PEOPLE CAN PRESENT REGARDING THE SPECIFICS OF CUNNINGHAM'S PRIOR CONVICTION.

I'VE PREVIOUSLY DISALLOWED THE 211 TO COME IN AS IMPEACHMENT. BUT THE DOOR IS WIDE OPEN FOR THE 211 AND ANYTHING ELSE HE'S DONE ILLEGAL, OR AT LEAST THAT'S BEEN VIOLENT, IN HIS LIFETIME, WHETHER OR NOT IT'S REPRESENTED BY A CONVICTION. AND I WANT TO AVOID HAVING A BIG FIGHT OR

ARGUMENT IF WE HAVE GOOD CHARACTER EVIDENCE ON WHETHER OR NOT THE PEOPLE WOULD THEN BE ALLOWED TO BRING THE REBUTTAL EVIDENCE OF CHARACTER OF HIS HISTORY. SO I'M AWARE OF THAT ISSUE. I HOPE BOTH ATTORNEYS ARE AWARE OF IT. AND WE'LL JUST GO FROM THERE.

MR. GULLEY: YOUR HONOR, MY ONLY QUESTION OF HER REGARDING THAT IS, "HAVE YOU EVER HAD ANY PROBLEMS WITH MR. CUNNINGHAM?" THAT'S THE SAME THING I ASKED EVERYONE ELSE.

THE COURT: WELL, IT'S BEEN ASKED OF OTHER PEOPLE ON CROSS-EXAMINATION. I THINK IT'S ARGUABLE THAT IT CERTAINLY COULD BE DEEMED TO BE GOOD CHARACTER EVIDENCE. IT'S ASKED FOR NO OTHER REASON THAN TO ATTEMPT TO SHOW HIM IN A LIGHT THAT HE'S A NON-VIOLENT, GOOD GUY, GOOD PERSON. THAT'S GOOD CHARACTER EVIDENCE. I'M NOT SAYING THAT THE DOOR HAS BEEN OPENED BECAUSE OF THE CROSS-EXAMINATION QUESTIONS YOU'VE ASKED OF OTHER WITNESSES. BUT IF YOU CALL A WITNESS AND AFFIRMATIVELY ASK HER THOSE TYPES OF QUESTIONS, THE DOOR IS OPEN.

MR. LINK: MAY I ASK, YOUR HONOR, INQUIRING OF GOOD CHARACTER EVIDENCE THROUGH TWO OF MY WITNESSES, WHY THAT WOULDN'T HAVE OPENED THE DOOR?

THE COURT: WHAT DID HE ASK? I DON'T REMEMBER FOR SURE.

MR. LINK: "YOU'VE NEVER HAD ANY PROBLEMS WITH" -- NINA TALVERA SPECIFICALLY -- "YOU'VE NEVER HAD ANY PROBLEMS WITH THE DEFENDANT?" "AT ONE POINT, IN FACT, THE DEFENDANT CAME OVER" -- I DON'T KNOW WHICH WITNESS HE DID THIS WAS WITH

-- "CAME OVER AND MADE A GATE FOR YOUR CHILD" --

MR. GULLEY: SHE VOLUNTEERED THAT. I DIDN'T ASK HER THAT.

THE COURT: NO, YOU ASKED HER THAT, I THINK. YEAH.

MR. LINK: WE HAD ABOUT THREE QUESTIONS ABOUT IT.

THE COURT: I GUESS THE ANSWER, MR. LINK, WOULD BE THIS IS FIRST OF ALL -- I'M NOT SURE. DID YOU OBJECT TO IT?

MR. LINK: I DON'T KNOW.

THE COURT: I'M NOT SURE YOU DID. WHETHER YOU DID OR NOT, I MEAN, CROSS-EXAMINATION, HAD THERE BEEN AN OBJECTION, THE OBJECTION WOULD HAVE BEEN SUSTAINED FOR PURPOSES OF IT'S BEYOND THE SCOPE AND IT'S IRRELEVANT AT THAT POINT. I DON'T THINK YOU CAN BRING IN VALID GOOD CHARACTER EVIDENCE WITH JUST KIND OF ONE OR TWO QUESTIONS ON CROSS-EXAMINATION. AND I'M NOT GOING TO FIND THAT THE DOOR IS OPEN BECAUSE OF THOSE QUESTIONS. BUT IF THE DEFENSE CALLS A WITNESS, AND DURING DIRECT EXAMINATION ASKS THOSE KINDS OF QUESTIONS, THAT'S GOOD CHARACTER EVIDENCE. AND IT NOW OPENS THE DOOR. THAT'S JUST KIND OF MY FEELING ON IT. HE DID MAKE A BIG DEAL OF IT. IT WAS NOT OBJECTED TO. IT WAS IRRELEVANT. IT WAS BEYOND THE SCOPE. IT DID COME IN.

MR. LINK: FOR THE RECORD, IT WAS OBJECTED TO. I'M REMEMBERING I DID OBJECT TO IT.

MR. GULLEY: BUT THE SECOND TIME WHEN I -- SHE VOLUNTEERED THIS INFORMATION ABOUT THE GATE. AND THEN WHEN I WAS FINISHING UP, I ASKED HER ABOUT IT AGAIN. MR. LINK OBJECTED. YOU SUSTAINED IT. THAT WAS THE END OF IT.

MR. LINK: AND JUST SO YOUR HONOR KNOWS AND

MR. GULLEY KNOWS, IF FOR SOME REASON THE DOOR HAS BEEN OPENED, I'LL CALL A SIDEBAR.

THE COURT: YEAH. OKAY. 5 MINUTES WITH YOUR CLIENT IN PRIVATE. AND WE SHOULD -- OH, DO YOU HAVE THAT WRITTEN STIPULATION?

MR. LINK: OH, YEAH.

MR. GULLEY: I GAVE IT TO YOU.

THE COURT: THAT'S OKAY. YOU CAN TAKE IT BACK.

MR. LINK: I JUST CHANGED IT A LITTLE BIT. MR. GULLEY ALREADY AGREED TO THE CHANGE.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT IN THE PRESENCE OF THE JURY:)

THE COURT: GOOD MORNING TO OUR JURORS. WE ARE BARK ON THE RECORD ON PEOPLE VERSUS CUNNINGHAM. BOTH ATTORNEYS AND THE DEFENDANT ARE PRESENT. ALL 14 JURORS ARE PRESENT AS WELL.

MR. LINK AND MR. GULLEY HAVE ENTERED INTO A STIPULATION. A STIPULATION IS AN AGREEMENT REGARDING CERTAIN FACTS. THE REASON WE HAVE STIPULATIONS IS WHERE THERE IS A FACT THAT IS NOT IN DISPUTE, RATHER THAN PUT EVIDENCE ON TO ESTABLISH IT, SOMETIMES THE ATTORNEYS AGREE TO IT AHEAD OF TIME, AND THEY'VE DONE SO IN THIS CASE. THE STIPULATION IS IN WRITING. I WILL READ IT TO YOU. AND ONCE IT HAS BEEN READ AND AGREED TO BY BOTH ATTORNEYS, I'LL GIVE YOU CERTAIN INSTRUCTIONS REGARDING IT.

IT READS AS FOLLOWS: "IT IS HEREBY AGREED BETWEEN THE PROSECUTOR AND THE DEFENSE, THAT THE DEFENDANT, JAMES CUNNINGHAM, WAS, PRIOR TO 9/12 OF 2004, CONVICTED OF A FELONY

IN THE STATE OF CALIFORNIA."

IS THAT STIPULATION ACCEPTABLE TO THE PEOPLE, MR. LINK?

MR. LINK: YES, YOUR HONOR.

THE COURT: AND TO THE DEFENSE, MR. GULLEY?

MR. GULLEY: YES, YOUR HONOR.

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THE COURT WILL RECEIVE THIS STIPULATION AS EVIDENCE AT THIS TIME, AND IT WILL BE MARKED AS COURT'S EXHIBIT NEXT IN ORDER. THIS MEANS THAT THIS FACT IS NOW CONCLUSIVELY PROVEN. IT'S BEEN ESTABLISHED. YOU ARE DIRECTED TO ACCEPT IT AS TRUE WITH NO FURTHER PROOF NEEDED ON THAT ISSUE.

MR. LINK, ANY ADDITIONAL EVIDENCE FROM THE PEOPLE?

MR. LINK: NO, YOUR HONOR. THE PEOPLE REST.

THE COURT: MR. GULLEY, DO YOU WISH TO FIRST OF ALL PRESENT EVIDENCE? AND IF SO, DO YOU WISH FIRST TO PRESENT AN OPENING STATEMENT?

MR. GULLEY: YES, YOUR HONOR. I DO WISH TO PRESENT EVIDENCE, BUT I'LL WAIVE OPENING STATEMENT.

THE COURT: ALL RIGHT.

MR. GULLEY: AND BEFORE I CALL MY FIRST WITNESS, I'D LIKE TO CHECK IN THE HALLWAY JUST TO MAKE SURE.

THE COURT: ALL RIGHT. THERE IS CERTAINLY SOME PRECEDENT FOR THAT. SO GO AHEAD.

MR. GULLEY: THANK YOU, YOUR HONOR. THE DEFENSE WILL NOW CALL JAMES CUNNINGHAM TO THE STAND.

THE COURT: OKAY. COULD I ASK COUNSEL TO PLEASE APPROACH FOR A MOMENT.

(SIDEBAR CONFERENCE, NOT REPORTED.)

THE COURT: OUR BUSINESS IS GOING TO TAKE LONGER THAN THE MINUTE OR MINUTE AND A HALF I PROMISED YOU. I APOLOGIZE FOR THIS. I DIDN'T ANTICIPATE IT. BUT WE'RE GOING TO NEED 5 MINUTES AND NO MORE THAN 5 MINUTES WITHOUT YOU FOLKS IN THE COURTROOM. SO PLEASE REMEMBER THE PREVIOUS ADMONITIONS. LEAVE YOUR NOTEBOOKS IN PLACE. WE WILL, I PROMISE, BE READY TO GO IN 5 MINUTES.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

THE COURT: JUST FOR THE RECORD, THE PURPOSE OF THE SHORT EXCLUSION OF THE JURY WAS SO THAT THE DEFENDANT COULD BE ESCORTED TO THE WITNESS STAND, WHICH WE'LL DO NOW.

(RECESS.)

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT IN THE PRESENCE OF THE JURY:)

THE COURT: WE'RE BACK ON THE RECORD NOW WITH ALL JURORS PRESENT, BOTH ATTORNEYS, AND THE DEFENDANT.

MR. CUNNINGHAM IS ON THE WITNESS STAND. AND WOULD YOU PLEASE STAND AND RAISE YOUR RIGHT HAND TO BE SWORN

JAMES CUNNINGHAM,

HAVING BEEN FIRST DULY ADMINISTERED AN OATH IN ACCORDANCE WITH CODE OF CIVIL PROCEDURE SECTION 2094, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. GULLEY:

Q. GOOD MORNING, MR. CUNNINGHAM. WOULD YOU STATE YOUR

FULL NAME AND SPELL YOUR LAST NAME FOR THE RECORD.
A. GOOD MORNING. JAMES CUNNINGHAM.
Q. SPELL YOUR LAST NAME.
A. C-U-N-N-I-N-G-H-A-M.
Q. OKAY. YOU HAVE A GARBLY VOICE. I'M GOING TO ASK YOU TO KEEP YOUR VOICE UP AND SPEAK INTO THE MIC SO EVERYONE CAN HEAR YOU.
HOW OLD ARE YOU, JAMES?
A. 46.
Q. ARE YOU MARRIED?
A. NO.
Q. DO YOU HAVE ANY CHILDREN?
A. YES.
Q. HOW MANY CHILDREN DO YOU HAVE?
MR. LINK: OBJECTION. RELEVANCE.
MR. GULLEY: FOUNDATION.
THE COURT: OVERRULED.
THE COURT: HOW MANY CHILDREN?
THE WITNESS: THREE BOYS AND TWO GIRLS.
BY MR. GULLEY:
Q. OKAY. DO ANY OF YOUR CHILDREN LIVE WITH YOU?
A. MY TWO GIRLS.
Q. DO THEY LIVE FULL-TIME WITH YOU OR JUST THE WEEKEND?
A. WEEKENDS.
Q. ARE YOU EMPLOYED, OR WERE YOU EMPLOYED ON SEPTEMBER THE 12TH?
A. YES.

Q. AND WHAT WAS YOUR JOB?
A. AUTOMATION GENERAL WELDER.
Q. AT WHERE?
A. AUTOMATION GENERAL.
Q. WHERE IS THAT AT?
A. CLAIREMONT.
Q. NOW, ON SEPTEMBER THE 12TH OF LAST YEAR, WERE YOU LIVING AT THIS APARTMENT COMPLEX?
THE COURT: REFERRING TO EXHIBIT --
MR. GULLEY: PEOPLE'S EXHIBIT 1, I BELIEVE IT IS.
THE COURT: YES.
BY MR. GULLEY.
Q. IS THAT YOUR APARTMENT COMPLEX?
A. COMPLEX, YES.
Q. OKAY. AND WHAT'S THE NAME OF THAT COMPLEX?
A. BELLA VISTA.
Q. HOW LONG HAD YOU BEEN LIVING AT BELLA VISTA?
A. FOR ABOUT 16, 17 MONTHS.
Q. OKAY. NOW, CAN YOU -- THERE'S A POINTER ON THE DESK IN FRONT OF YOU THERE.
THE COURT: PERHAPS THE BAILIFF CAN GET THAT.
BY MR. GULLEY:
Q. CAN YOU SHOW THE JURY WHERE YOUR APARTMENT WAS.
A. IT WOULD BE RIGHT HERE.
Q. OKAY. IN PEOPLE'S EXHIBIT B, YOU POINTED TO THE BOTTOM DOWNSTAIRS APARTMENT?
A. YES.
Q. AND THAT'S WHERE YOU LIVED AT THAT TIME?

A. YES.
Q. AND DID YOU LIVE THE WHOLE 13 MONTHS AT THAT APARTMENT?
A. YES.
Q. DO YOU KNOW REBECCA?
A. YES.
Q. OKAY. AND DO YOU KNOW MR. CASTRO?
A. NO, NOT PERSONALLY, NO.
Q. OKAY. REBECCA KNOX, RIGHT?
A. YES.
Q. AND DO YOU KNOW HER HUSBAND, CHRISTOPHER KNOX?
A. YES.
Q. HOW LONG HAVE YOU KNOWN REBECCA KNOX?
A. I WOULD SAY ABOUT A YEAR.
Q. HOW DID YOU MEET REBECCA KNOX?
A. OUR KIDS USED TO PLAY TOGETHER.
Q. YOUR KIDS AND HER KIDS USED TO PLAY TOGETHER?
A. YES.
Q. HOW MANY KIDS DOES SHE HAVE?
A. SHE HAS ONE BOY.
Q. WOULD YOU SAY YOU GUYS HAD A FRIENDSHIP?
A. YES.
Q. OKAY. AND THIS FRIENDSHIP, WOULD YOU DO ANYTHING FOR HER, LEND HER MONEY, OR ANYTHING LIKE THAT?
A. YES.
Q. WHAT TYPE OF THINGS WOULD YOU DO FOR HER?
A. SHE NEEDED TRANSPORTATION, I WOULD PROVIDE THAT. SHE NEEDED MONEY LENDING, I WOULD LOAN HER THAT. SOMETIMES

IF SHE NEEDED -- WAS HAVING CONFRONTATIONS UPSTAIRS, I WOULD SIT UP -- I WOULD LET HER SIT AT MY HOUSE FOR A WHILE.

Q. WHAT ABOUT HER HUSBAND, CHRISTOPHER KNOX?

A. WELL, WE WERE FRIENDLY AT FIRST, BUT HE WAS KIND OF LIKE A JEALOUS MAN, AND --

MR. LINK: OBJECTION AT THIS POINT. NONRESPONSIVE. THE QUESTION IS VAGUE.

THE COURT: SUSTAINED. WE WERE FRIENDLY AT FIRST IS OKAY. EVERYTHING ELSE IS STRICKEN.

BY MR. GULLEY:

Q. OKAY. AT SOME POINT, WOULD IT BE FAIR TO SAY, THAT YOUR RELATIONSHIP WITH CHRISTOPHER KNOX DETERIORATED?

MR. LINK: OBJECTION. LEADING.

THE COURT: SUSTAINED.

BY MR. GULLEY:

Q. DID YOUR RELATIONSHIP WITH CHRISTOPHER KNOX CHANGE?

A. YES.

Q. HOW DID IT CHANGE?

A. I GREW ANGRY AT HIM.

Q. WOULD IT BE FAIR TO SAY THERE WERE HOSTILITIES?

MR. LINK: OBJECTION. LEADING.

THE COURT: SUSTAINED.

BY MR. GULLEY:

Q. WAS THERE HOSTILITIES BETWEEN THE TWO OF YOU?

MR. LINK: OBJECTION. LEADING.

THE COURT: OVERRULED.

THE WITNESS: AT TIMES. IT WOULD BE HARD TO ANSWER BECAUSE I DIDN'T HAVE NOTHING TOWARDS HIM. I COULDN'T SPEAK

FOR HIM HOW HE FELT REALLY.

BY MR. GULLEY:

Q. WAS THERE EVER ANY INCIDENTS WHERE HE THREATENED YOU WITH A BASEBALL BAT?

A. YES.

Q. CAN YOU TELL US ABOUT THAT?

A. HIS WIFE HAD PUT A BOGUS CHECK IN MY ACCOUNT, MY CHECKING ACCOUNT.

MR. LINK: OBJECTION. NONRESPONSIVE.

THE COURT: OVERRULED. DON'T GIVE -- WE DON'T NEED TO KNOW THE HISTORY.

THE WITNESS: RIGHT.

THE COURT: JUST THE QUESTION IS, TELL US ABOUT THE INCIDENT IN WHICH YOU SAY YOU WERE THREATENED WITH A BAT.

THE WITNESS: OH, THE BAT. OKAY. I CONFRONTED HER ABOUT A MISDEED SHE'S DONE, AND I ASKED HER ABOUT -- I ASKED WHAT THEY WERE GOING TO DO ABOUT IT. HE FLEW OFF THE HANDLE ABOUT IT.

BY MR. GULLEY:

Q. WHEN YOU SAY "HE FLEW OFF THE HANDLE," WHAT DO YOU MEAN BY THAT?

MR. LINK: OBJECTION. VAGUE AS TO TIME AT THIS POINT.

THE COURT: OVERRULED.

THE WITNESS: HE FLEW OFF THE HANDLE ABOUT IT. HE ASKED ME TO LEAVE HIS HOME. I DID THAT, STEPPED OUT. I TOLD THEM I WAS GOING TO CALL THE OFFICIALS ABOUT THIS. AND HE WENT ON TO TELL ME HOW --

MR. LINK: OBJECTION. HEARSAY.

THE COURT: SUSTAINED. THE QUESTION -- WE CAN'T LISTEN TO CONVERSATIONS THAT YOU HAD WITH HIM. THINGS HE SAID, THINGS YOU SAID, THAT'S HEARSAY. SO JUST TELL US ABOUT THE BAT.

THE WITNESS: WELL, HE THREATENED TO HIT ME WITH THE BAT.

BY MR. GULLEY:

Q. SO HE ACTUALLY HAD A BAT IN HIS HAND?

A. YES.

Q. AND HE WAS THREATENING YOU WITH IT?

A. YES.

Q. AND WERE YOU ARMED AT THAT TIME?

A. NO.

Q. OKAY. AND HOW LONG AGO WAS THAT PRIOR TO THIS INCIDENT?

A. I'D GIVE IT A COUPLE OF MONTHS.

MR. GULLEY: OKAY. YOUR HONOR, MAY I HAVE A SECOND, PLEASE?

THE COURT: YES.

MR. GULLEY: THANK YOU.

BY MR. GULLEY:

Q. NOW, I WANT TO DIRECT YOUR ATTENTION TO THE NIGHT OF THE INCIDENT, SEPTEMBER THE 12TH OF LAST YEAR. DID YOU WORK THAT DAY?

A. A SIDE JOB, YES.

Q. OKAY. AND A SIDE JOB, WHAT DO YOU MEAN BY THAT?

A. ON THE WEEKENDS SOMETIMES I SCHEDULE ALSO DOING

LANDSCAPING. I DO THAT ON THE WEEKEND FOR EXTRA MONEY.

Q. OKAY. WHAT TIME DID YOU ARRIVE HOME THAT DAY?

A. I WOULD GIVE IT BETWEEN 10 AND 10:30.

Q. EVENING?

A. EVENING.

Q. WHAT TIME DID YOU LEAVE?

A. AT ABOUT BETWEEN 5 AND 5:30.

Q. THAT EVENING?

A. YES.

Q. OR THAT MORNING?

A. THAT EVENING.

Q. OKAY. DURING THE DAY PERIOD OF TIME, DID YOU HAPPEN TO SEE MS. KNOX -- OR EXCUSE ME -- MR. CASTRO?

A. DURING THE DAYTIME, YES, I'D SEEN CASTRO AND KNOX, YES.

Q. OKAY. DID YOU SPEAK TO HIM?

A. NO, HE WASN'T SPEAKING.

Q. OKAY. I'M SORRY. YOU WEREN'T ON SPEAKING TERMS WITH HIM AT THAT TIME?

MR. LINK: OBJECTION. VAGUE. CASTRO OR --

BY MR. GULLEY:

Q. MS. KNOX, WERE YOU ON SPEAKING TERMS WITH HER AT THAT TIME?

A. MS. KNOX, YES.

Q. OKAY. WHAT ABOUT MR. CASTRO?

A. I DIDN'T KNOW HIM, NO.

Q. OKAY. HAD YOU HAD ANY PROBLEMS WITH MR. CASTRO UP TO THIS DATE?

A. NO.

Q. OKAY. ALL RIGHT. YOU NEVER SAID ANYTHING TO HIM, HE NEVER SAID ANYTHING TO YOU?

A. NEVER.

Q. WHAT IS YOUR RELATIONSHIP WITH CHRISTOPHER KNOX AT THIS TIME?

A. NO SPEAKING. NO CONTACT. NO SPEAKING.

Q. OKAY. NOW, ON THIS PARTICULAR DATE, YOU SAID YOU LEFT THE HOUSE AT 5:30?

A. YES.

Q. AND WHAT WAS THE CONDITION OF YOUR APARTMENT WHEN YOU LEFT?

A. THAT DAY I LEFT THE WINDOWS OPEN.

Q. OKAY. WERE THE DOORS LOCKED?

A. THE DOORS WERE LOCKED.

Q. OKAY. DO YOU NORMALLY LEAVE YOUR WINDOWS OPEN?

A. IF I PLAN TO BE HOME BEFORE DARK, YES.

Q. OKAY. THIS DAY YOU HAD PLANNED TO BE HOME BEFORE DARK?

A. YES, I DID.

Q. OKAY. AND WHAT TIME DID YOU LEAVE YOUR HOUSE?

A. BETWEEN I'D SAY 5 AND 5:30.

Q. OKAY. AND DID YOU GO DO THIS OTHER JOB?

A. YES.

Q. OKAY. WHAT TIME DID YOU ARRIVE HOME?

A. THEN I CAME BACK HOME. I GOT THERE, I WOULD SAY, BETWEEN 10, 10:30.

Q. OKAY. AND WHAT HAPPENED WHEN YOU GOT BACK HOME?

A. I NOTICED MY DAUGHTER'S BIKE WAS MISSING. I SEEN WHERE SOMEBODY HAD PRIED INTO MY SCREEN. AND WHEN I GOT IN, THE CLOTHES OF MY DAUGHTER WERE MISSING, MY CELL PHONE WAS MISSING, AND I WAS PRETTY UPSET ABOUT IT.

Q. WAS ANYTHING ELSE MISSING BESIDES, YOU SAID, YOUR DAUGHTER'S BIKE, SOME CLOTHES, AND A CELL PHONE?

A. AND THEN I HAVE A LITTLE DESK I SIT AT THE WINDOW THERE WAS OPEN. SOME CHECKS WERE MISSING OUT OF IT.

Q. ARE THESE YOUR PERSONAL CHECKS?

A. WORK AND PERSONAL CHECKS.

Q. OKAY. WHAT DID YOU DO ONCE YOU FOUND THESE THINGS MISSING?

A. I ASKED THE NEXT DOOR NEIGHBOR, "DID YOU SEE ANYBODY GOING IN MY HOUSE?" AND THEY TOLD ME WHO WAS HANGING AROUND IN FRONT OF MY HOUSE.

Q. I DON'T WANT YOU TO TELL ME WHAT EXACTLY THEY SAID. BUT WHEN YOU SAY "NEXT DOOR NEIGHBOR," CAN YOU USE THE POINTER AND SHOW US WHAT DOOR YOU'RE TALKING ABOUT.

A. THIS DOOR RIGHT HERE.

Q. THAT WOULD BE DOOR NUMBER 2 ON PICTURE B. ALL RIGHT. WHILE YOU GOT THE POINTER IN YOUR HAND, CAN YOU KIND OF GIVE THE JURY AN IDEA OF THIS WINDOW THAT YOU WERE TALKING ABOUT THAT WAS BROKEN INTO.

A. THIS IS THE KITCHEN WINDOW RIGHT HERE, AND THIS IS THE LIVING ROOM WINDOW RIGHT HERE.

Q. BEHIND THE PALM TREE BEHIND THE STEPS?

A. YES. AND RIGHT HERE YOU CAN REACH AROUND.

Q. I'M SORRY?

A. YOU'RE AT THIS WINDOW RIGHT HERE, ALL YOU GOT TO DO IS PRY AROUND TO REACH AROUND TO OPEN THE DOOR.

Q. OKAY. AND THAT'S THE WINDOW THAT WAS PRIED OPEN?

A. YES, THE SCREEN WAS PRIED OPEN. THE WINDOW WAS OPEN, BUT THE SCREEN WAS PRIED. YOU CAN STICK YOUR HAND IN THERE.

Q. OKAY. NOW, ONCE -- AFTER YOU WERE SPEAKING WITH YOUR NEIGHBOR, WHAT DID YOU DO AFTER THAT?

A. AFTER I DID THAT RIGHT THERE, THEY WERE ON THE BALCONY, CASTRO, REBECCA, AND SOME OTHER PEOPLE THAT WERE AT THAT HOME. THEY WAS JUST LOOKING DOWN ON ME. AND I ASKED THEM ABOUT DID THEY SEE ANYBODY AND ALL THAT. AND THEY HAD GOT KIND OF SMART WITH ME AND ALL OF THAT.

Q. SLOW DOWN AND SPEAK LOUDLY, OKAY? WHAT HAPPENED? YOU ASKED THEM ABOUT YOUR PHONE, AND, I'M SORRY, YOU ASKED THEM --

A. I ASKED THEM ABOUT WHO HAD ENTERED -- DID THEY SEE ANYBODY AROUND MY APARTMENT. AND THEY GOT SARCASTIC WITH ME AND ALL THAT, AND, YOU KNOW, AND SO I WENT IN THE HOUSE, YOU KNOW, TRIED TO COOL DOWN A LITTLE BIT.

MR. LINK: OBJECTION. NARRATIVE.

THE COURT: I'LL SUSTAIN THE OBJECTION. ALLOW THE ANSWER TO STAND. NEXT QUESTION.

BY MR. GULLEY:

Q. OKAY. YOU WENT IN THE HOUSE. YOU TRIED TO COOL DOWN. WHAT DID YOU DO NEXT?

A. THEN FROM THERE, I WENT UPSTAIRS AND WAS LOOKING FOR REBECCA.

Q. WHEN YOU SAY YOU WENT UPSTAIRS, YOU WENT UPSTAIRS IN YOUR APARTMENT, OR YOU WENT OUTSIDE AND THEN WENT UPSTAIRS?
A. I WENT OUTSIDE AND THEN WENT UPSTAIRS.
Q. WHAT WAS YOUR PURPOSE FOR GOING UPSTAIRS?
A. I WAS GOING UPSTAIRS TO SEE WHAT I COULD SEE AND RETRIEVE MY ITEMS, MY PROPERTY.
Q. NOW, WHY DID YOU THINK YOUR PROPERTY WAS UP THERE?
A. BECAUSE THEY HAVE TAKEN THINGS IN THE PAST FROM PEOPLE OVER THERE, AND JUST THE TYPE OF PEOPLE -- MOSTLY ITS JUST REALLY INVESTIGATING, YOU KNOW, STUFF. AND SINCE THEY WERE -- I DON'T WANT TO SLING NO MUD -- BUT THEY WOULD BE THE FIRST PEOPLE YOU WOULD WANT TO CONTACT IF SOMETHING CAME UP MISSING IN THE APARTMENTS.
Q. OKAY. WHEN YOU WENT UPSTAIRS, DID YOU ACTUALLY TALK TO REBECCA, OR WHAT?
A. NO, NOT TO -- NO, CASTRO SAID SHE WASN'T HOME.
Q. OKAY. NOW, THIS IS THE FIRST TIME YOU WENT UPSTAIRS?
A. YEAH.
Q. WERE YOU ARMED WITH ANYTHING?
A. EXCUSE ME?
Q. WERE YOU ARMED WHEN YOU WENT UPSTAIRS THE FIRST TIME?
A. NO. NO.
Q. OKAY. LET ME JUST ASK YOU TOO, IN 1994 YOU WERE CONVICTED OF A FELONY, CORRECT?
A. YEAH.

Q. OKAY. ALL RIGHT. SO AFTER YOU GO UPSTAIRS THE FIRST TIME, WHAT DID YOU DO AFTER THAT?
A. CAME BACK DOWNSTAIRS -- OH, I ASKED WHERE SHE WAS. AND HE SAID SHE'LL BE BACK IN ABOUT 15 OR 10 MINUTES. SO I WAITED THAT LONG.
Q. WHEN YOU'RE SAYING "HE," WHO SAID THAT?
A. CASTRO SAID THAT.
Q. SO YOU DID WHAT?
A. I TOLD HIM, "TELL HER I'LL BE BACK."
Q. OKAY. WHAT DID YOU DO THEN?
A. THEN I WENT DOWNSTAIRS AND I HAD TO WASH SOME CLOTHES, MY WORK CLOTHES. SO I WENT TO THE STORE AND I CAME BACK. WHEN I CAME BACK, IT WAS SEVERAL PEOPLE ON HER BALCONY. I TOLD HER I WANTED TO TALK TO HER, AND SHE TOLD ME TO COME UP THERE AND TALK TO HER.
MR. LINK: OBJECTION. HEARSAY.
THE COURT: SUSTAINED. WHAT HE SAID SHE SAID IS STRICKEN. THE JURY IS NOT TO CONSIDER.
BY MR. GULLEY:
Q. WHEN YOU GET BACK AT SOME POINT IN TIME, DID YOU RUN INTO THE SECURITY GUARD, MR. BLOOMFIELD?
A. I RAN INTO HIM BEFORE I WAS ON MY WAY TO THE STORE.
Q. OKAY. DID YOU SAY ANYTHING TO HIM ABOUT WASHING?
A. I ASKED HIM WHAT TIME THE WASHHOUSE WAS GOING TO BE CLOSED BECAUSE IT'S A LITTLE LATE.
Q. THE WASHHOUSE?
A. YEAH, IT CLOSES.
Q. THE LAUNDROMAT?

A. THE LAUNDROMAT, YES.
Q. SO YOU CAME BACK. AND DID YOU GO BACK TO YOUR APARTMENT?
A. YES.
Q. WHEN YOU CAME BACK, IS THAT WHEN YOU SAW REBECCA AND THE OTHER PEOPLE?
A. YEAH.
Q. AND THEY WERE UPSTAIRS OUTSIDE?
A. YES.
Q. NOW, WHAT DID YOU DO WHEN YOU CAME BACK?
A. I WENT INSIDE. THEY WERE YELLING ALL AT ME, AND, YOU KNOW, TALKING TO ME. I WENT IN THE HOUSE AND -- I WENT IN THE HOUSE AND I ARMED MYSELF.
Q. OKAY. AND WHEN YOU SAY YOU ARMED YOURSELF, IS THAT THE SHOTGUN THAT'S BEEN PROMINENTLY DISPLAYED TO THE JURY?
A. YES.
Q. IS THAT YOUR SHOTGUN?
A. YES.
Q. WHY DID YOU ARM YOURSELF WITH THAT SHOTGUN?
A. 6 MONTHS PRIOR TO THAT, PEOPLE THAT WAS HANGING AROUND THE RESIDENCE HAD JUMPED ME, AND I DIDN'T WANT THE SAME THING TO HAPPEN AGAIN. AND I HAD 16 STITCHES IN MY HEAD BEHIND IT.
Q. WERE YOU ALSO AFRAID OF MR. KNOX?
MR. LINK: OBJECTION. LEADING.
THE COURT: SUSTAINED.
BY MR. GULLEY:
Q. WERE YOU AFRAID OF MR. KNOX?

A. YES.
Q. AND IS THAT BECAUSE HE HAD PULLED A BASEBALL BAT OUT ON YOU BEFORE?
A. AND THREATS.
Q. DID YOU ACTUALLY GO UPSTAIRS WITH THAT GUN?
A. EXCUSE ME?
Q. DID YOU ACTUALLY GO BACK UPSTAIRS --
MR. LINK: YOUR HONOR, OBJECTION. LEADING. HE'S LEADING THIS WITNESS.
THE COURT: I DISAGREE, MR. LINK. THE QUESTION IS, DID YOU GO UPSTAIRS? THAT'S NOT A LEADING QUESTION.
THE WITNESS: YES.
THE COURT: WHAT'S YOUR ANSWER?
THE WITNESS: YES.
BY MR. GULLEY:
Q. OKAY. WHAT WAS THE PURPOSE OF YOU GOING BACK UPSTAIRS?
A. SHE SAID, "YOU CAN COME UP IN HERE AND LOOK IF YOU WANT TO."
Q. AND WHEN SHE SAID "LOOK," YOU MEAN LOOK FOR YOUR PROPERTY?
A. YES.
Q. DID YOU ACTUALLY GO INTO THE APARTMENT?
A. I WENT -- THE SECOND TIME I WENT UP THERE, I DIDN'T GO IN THE APARTMENT. I WAS STILL AT THE DOOR.
Q. WHAT HAPPENED THERE?
A. THAT'S WHEN MR. KNOX HAD CAME OUT WITH THE BAT. THE DOOR STARTED CLOSING INSIDE THE HOUSE, SO I DIDN'T KNOW

WHAT WAS GOING TO HAPPEN. SO FROM THERE, I JUST TOLD THEM THAT I'LL GET BACK WITH THEM, AND I'M GOING TO CALL THE POLICE AND ALL THAT, AND THEN I LEFT. AND THEN THEY WERE YELLING.

Q. AT ANY POINT IN TIME, DID YOU EVER HIT MR. CASTRO?

A. NEVER.

Q. DID YOU EVER POINT THE GUN AT MR. CASTRO?

A. NEVER.

Q. WHERE WAS THE GUN WHILE YOU WERE STANDING AT THE DOOR OF THAT APARTMENT?

A. I HAD IT AT MY SIDE.

Q. OKAY. DID YOU POINT IT AT ANYBODY IN THE APARTMENT?

A. NO.

Q. DID YOU LET HIM KNOW YOU HAD A GUN?

A. YES.

Q. HOW DID YOU DO THAT?

A. WHEN HE CAME OUT WITH THE BAT HE SAID -- HE WAS COMING TOWARDS ME. I SAID -- I LET HIM KNOW THAT HE WASN'T GOING TO CRACK ME IN THE HEAD WITH THE BAT.

Q. OKAY. AND DID YOU SHOW HIM THE GUN?

A. NO, HE SEEN IT -- WELL, I'M GUARDING THE DOOR. AS HE LOOKED OVER, HE SEEN IT, AND HE SAID, "WHAT'S THAT?" THAT'S WHEN I TOLD HIM IT WAS A GUN.

Q. YOU ACTUALLY HAD THE GUN?

A. YES.

Q. WAS IT POINTED AT ANYBODY?

A. NO.

Q. AT ANY POINT IN TIME, DID YOU POINT IT AT ANYBODY?
A. I NEVER POINTED IT AT ANYONE.
Q. OKAY. NOW, WHAT CONTACT DID YOU HAVE WITH MR. CASTRO AT THAT TIME?
A. I HAD NO CONTACT WITH HIM AT ALL.
Q. OKAY. YOU NEVER PUSHED HIM DOWN?
A. NEVER.
Q. OKAY. DID YOU ACCUSE HIM OF TAKING YOUR ITEMS, OR DID YOU ACCUSE REBECCA?
A. I ASKED HIM DID HE HAVE MY PHONE. I ASKED HIM. I DIDN'T ACCUSE HIM.
Q. AND WHAT WAS HIS RESPONSE?
A. HE SAID, "NO, I DON'T HAVE IT."
MR. LINK: OBJECTION. HEARSAY.
THE COURT: SUSTAINED.
BY MR. GULLEY:
Q. NOW, AFTER THIS CONFRONTATION AT THE APARTMENT, DID YOU LEAVE?
A. DID I LEAVE?
Q. YES.
A. YES.
Q. WHERE DID YOU GO?
A. I WAS --
Q. FROM THE MOMENT YOU LEFT THE APARTMENT, WALK US THROUGH THE TIME YOU GOT TO YOUR CAR AND WHAT HAPPENED.
A. AFTER WE EXCHANGED -- WELL, I TOLD HIM, "OKAY. WHATEVER," WALKED DOWN THE STAIRS. HE SAID, I'M GOING TO GET YOU TONIGHT."

MR. LINK: OBJECTION. SUSTAINED. NARRATIVE.

THE COURT: SUSTAINED. STRICKEN.

MR. LINK: SORRY. HEARSAY AND NARRATIVE.

THE WITNESS: YEAH, OKAY. I WENT TO MY CAR TO GET MY TRUCK FROM THERE, AND I JUST LEFT THE PREMISES.

BY MR. GULLEY:

Q. OKAY. DID YOU ACTUALLY WALK DOWN THE STEPS?

A. YES, I DID.

Q. AT ANY POINT IN TIME, WAS MR. KNOX STILL YELLING AT YOU?

A. YEAH, EVEN MORE.

Q. OKAY. WAS HE THREATENING YOU?

A. YES, HE WAS.

Q. AND WERE YOU YELLING BACK AT HIM?

A. I CAN'T SAY YELLING. I WAS MOSTLY JUST TRYING TO LEAVE THE SITUATION.

Q. OKAY. IT'S FAIR TO SAY YOU'RE A LITTLE BIT ANGRY AT THIS TIME?

A. YES.

Q. OKAY. AND DID YOU EVER TURN AROUND AND POINT THAT GUN AT HIM OR ANYONE AT THAT APARTMENT?

A. NO, NOT AT ALL.

Q. OKAY. WHERE DID YOU GO FROM THERE?

A. FROM THERE I LEFT THE APARTMENT COMPLEX, MADE A RIGHT ON MOLLISON --

Q. OKAY. LET ME STOP YOU. YOU ACTUALLY WALKED TO YOUR VEHICLE, CORRECT?

A. YES.

Q. AND WHAT KIND OF CAR?
A. I HAVE A BLUE TOYOTA TRUCK.
Q. YOU ACTUALLY GOT INSIDE THE TRUCK?
A. YES.
Q. WHERE WAS THE GUN AT AT THAT TIME?
A. I TOOK THE GUN AND JUST LAID IT ON THE FLOOR THERE OF THE TRUCK.
Q. OKAY. AND DID YOU LEAVE THE APARTMENT?
A. DID I LEAVE THE APARTMENT?
Q. YEAH.
A. YES.
Q. AND WHERE DID YOU GO?
A. I MADE A RIGHT ON MOLLISON, AND THEN I MADE A LEFT TO GO ON THE FREEWAY WEST.
Q. OKAY. AT SOME POINT IN TIME, DID YOU SEE THE POLICE BEHIND YOU?
A. YEAH.
Q. OKAY. AND YOU SAW THE LIGHTS AND HEARD THE SIREN?
A. YEAH.
Q. OKAY. AND DID YOU THROW THE GUN OUT THE WINDOW?
A. YES.
Q. WHY?
A. I DIDN'T WANT TO -- I COULD HAVE BEEN SHOT OR ANYTHING. I DIDN'T -- I DIDN'T WANT TO SUBJECT MYSELF TO THAT.
Q. OKAY. AS YOU THREW THE GUN OUT OF THE WINDOW, DID YOU PARK? DID YOU PULL OVER?
A. YEAH.

Q. AND DID YOU GIVE YOURSELF UP TO THE POLICE?
A. YES.
Q. NOW, PRIOR TO THIS INCIDENT, HAD YOU HAD ANY OTHER RUN-INS OVER AT THE APARTMENT COMPLEX WITH ANY OTHER NEIGHBOR?
A. NONE.
Q. NOW, YOU SAW THE OTHER GUNS THAT WERE INTRODUCED INTO EVIDENCE. THOSE ARE ALSO YOUR GUNS?
A. YES.
Q. AND THEY WERE IN YOUR APARTMENT?
A. YES.
MR. GULLEY: OKAY. THANK YOU. NOTHING FURTHER.
THE COURT: CROSS-EXAMINE.
MR. LINK: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MR. LINK:
Q. MR. CUNNINGHAM, YOU ADMIT TO THIS JURY TODAY THAT YOU WERE INDEED A FELON, CORRECT?
A. EXCUSE ME?
Q. YOU'RE A FELON? YOU ARE A FELON?
A. YEAH.
Q. YOU KNOW YOU'RE NOT SUPPOSED TO HAVE FIREARMS, CORRECT?
A. YES.
Q. BUT YOU POSSESSED FIREARMS, CORRECT?
A. FOR A PERIOD.
Q. WELL, YOU HAD A FIREARM ON THE DATE OF SEPTEMBER 12TH, 2004, LAST YEAR, CORRECT?

A. YES.
Q. IN FACT, YOU HAD A SHOTGUN, CORRECT?
A. YES.
Q. YOU ALSO HAVE WHAT APPEARS TO BE A RIFLE OVER THERE, CORRECT?
A. YES.
Q. ALL RIGHT. AND YOU HAVE ANOTHER LITTLE SHOTGUN, CORRECT?
A. I DON'T KNOW IF YOU WOULD CONSIDER IT A SHOTGUN.
Q. WHAT WOULD YOU CONSIDER IT?
A. A GUN.
Q. WHAT TYPE OF GUN IS IT?
A. A RIFLE.
Q. SO YOU KNOW YOU'RE A FELON, RIGHT?
A. CORRECT.
Q. YOU KNOW YOU'RE NOT SUPPOSED TO POSSES ANY SORT OF WEAPONS?
MR. GULLEY: ASKED AND ANSWERED.
THE COURT: OVERRULED.
BY MR. LINK:
Q. RIGHT?
A. CORRECT.
Q. YET, YOU POSSESSED THIS GUN RIGHT HERE, CORRECT?
A. YES. CORRECT.
Q. YOU KEEP IT IN YOUR CLOSET, DON'T YOU?
A. NO.
Q. WHERE DO YOU KEEP THIS GUN?
THE COURT: WHICH GUN?

MR. LINK: I APOLOGIZE.
BY MR. LINK:
Q. I'M SHOWING YOU WHAT'S BEEN MARKED AS PEOPLE'S 3.
A. I DON'T KNOW HOW TO ANSWER THAT. BUT I DON'T KEEP IT THERE. BUT I HAVE TO ARM BEHIND INCIDENTS OF THREATS.
Q. WHERE DO YOU KEEP THIS GUN IS THE QUESTION.
A. HIDDEN.
Q. WHERE DO YOU HIDE THIS GUN IN YOUR APARTMENT?
A. THAT'S LOCKED AWAY IN THE CLOSET.
Q. LOCKED AWAY HOW? HOW DO YOU LOCK YOUR GUN?
A. I HAVE A DRAWER, A CHEST, THAT I KEEP IT IN THAT'S LOCKED.
Q. OKAY. BUT STILL EASY TO GET TO IF YOU NEED IT, RIGHT, FOR PROTECTION?
A. NO, NOT REALLY.
Q. OKAY. IS THE CHEST LOCKED?
A. YES.
Q. OKAY. WITH WHAT KIND OF LOCK?
A. A CHEST. A DRAWER LOCK.
Q. A DRAWER LOCK?
A. YEAH. I DON'T KNOW HOW TO DESCRIBE -- WHAT YOU WOULD CALL THE LOCK. BUT ANYTHING YOU WOULD PUT IN THE CHEST -- NOT A COMBINATION LOCK OR A PADLOCK.
Q. A KEY LOCK?
A. A KEY LOCK, YEAH.
Q. SO YOU NEED A KEY TO UNLOCK IT?
A. YES.
Q. AND THAT'S WHERE YOU KEEP THIS GUN?

A. YES.
Q. WHERE DID YOU GET THIS GUN?
MR. GULLEY: OBJECTION. RELEVANCE.
THE COURT: SUSTAINED.
BY MR. LINK:
Q. LET'S TAKE THE NEXT GUN, PEOPLE'S EXHIBIT 6. WHERE DO YOU KEEP THIS GUN?
A. I KEEP ALL THE GUNS IN THE SAME PLACE.
Q. ALL IN THE SAME PLACE?
A. YES.
Q. IN THAT CLOSET?
A. YES.
Q. ALL RIGHT. WHY DO YOU NEED THREE GUNS?
A. A LOT OF GANG ACTIVITY ARE HAPPENING IN THE APARTMENTS, SOMEBODY WAS MURDERED, AND I WAS BEING THREATENED A WHOLE LOT OVER THERE.
Q. YOU NEED A RIFLE, A SHORT BARRELED SHOTGUN, AND ANOTHER SORT OF SHOTGUN SLASH RIFLE, YOU NEED THREE GUNS TO PROTECT YOU?
A. I REALLY DON'T NEED THEM, NO.
Q. WHY DO YOU HAVE THEM?
A. NO, I DON'T NEED THEM.
Q. YOU DON'T NEED THEM. YOU'RE NOT ALLOWED TO POSSES THEM, CORRECT?
A. CORRECT.
Q. BUT YOU POSSES THEM?
A. AT THAT POINT IN TIME, YES.
Q. WELL, HOW LONG HAVE YOU HAD THEM?

A. I'D SAY, I'D GIVE IT ABOUT -- I'D SAY ABOUT A COUPLE MONTHS.

Q. AND YOU KNOW THAT THIS IS A SHORT BARRELED SHOTGUN, CORRECT?

A. I KNOW THAT'S -- YEAH, I GUESS YOU CAN CALL IT A SHORT BARREL.

Q. AND YOU KNOW THAT IN ITSELF IS ILLEGAL TOO, CORRECT?

MR. GULLEY: OBJECTION, YOUR HONOR.

THE COURT: OVERRULED. YOU CAN ANSWER.

THE WITNESS: I DON'T KNOW THAT.

BY MR. LINK:

Q. YOU DON'T KNOW THAT A MODIFIED SHOTGUN, OR A SHORT BARRELED SHOTGUN, IS ILLEGAL?

A. NO.

Q. OKAY. SO YOU THOUGHT THIS WAS A LEGAL WEAPON TO HAVE?

MR. GULLEY: OBJECTION, YOUR HONOR.

THE COURT: OVERRULED.

THE WITNESS: I THOUGHT IT WAS PROTECTION.

BY MR. LINK:

Q. THE QUESTION WAS, YOU THOUGHT THIS WAS A LEGAL WEAPON TO HAVE?

A. I'M NOT UNDERSTANDING YOUR QUESTION.

Q. DID YOU THINK THAT THIS WEAPON THAT I'M HOLDING IN MY HAND THAT YOU POSSESSED IN YOUR APARTMENT, DID YOU THINK THIS WAS A LEGAL WEAPON TO HAVE?

A. I WOULDN'T HAVE -- I KNOW IT'S ILLEGAL FOR ME TO

HAVE.

Q. IT'S ILLEGAL FOR YOU TO HAVE?

A. ILLEGAL.

Q. YOU KEPT YOUR WINDOWS OPEN, CORRECT?

A. YES, SIR.

Q. ON THIS PARTICULAR DAY?

A. IT WAS 100 AND OVER, YES.

Q. YOU HAVE THREE GUNS IN THE HOUSE, CORRECT?

A. YES.

Q. WERE YOU TRYING TO GET YOUR GUNS STOLEN?

MR. GULLEY: OBJECTION.

THE COURT: SUSTAINED.

BY MR. LINK:

Q. AT SOME POINT, YOU DISCOVERED THAT YOUR APARTMENT IS BROKEN INTO ON THE 12TH?

A. I DON'T KNOW IF YOU WANT TO SAY BROKEN INTO. I KNOW IT WAS ENTERED.

Q. WELL, HOW DID THEY GET IN?

A. THROUGH THE SCREEN.

Q. ALL RIGHT. THE SCREEN WAS BENT?

A. BENT, YES.

Q. ALL RIGHT. WHAT ABOUT THE WINDOW ITSELF, WAS THERE PRY MARKS ON THE WINDOW?

A. THE WINDOW WAS OPENING.

Q. THE WINDOWS ARE USUALLY LOCKED THOUGH, CORRECT?

A. ONLY WHEN I GO TO WORK AND EXPECT TO BE HOME AT NIGHT.

Q. SO THE WINDOW WAS OPEN BUT THE SCREEN WAS PRIED

OFF?
A. YES.
Q. ALL RIGHT. PRY MARKS ON THE SCREEN?
A. BENDS.
Q. SO THE SCREEN WAS BENT?
A. YEAH.
Q. YOU DISCOVERED THAT THINGS WERE TAKEN OUT OF YOUR PLACE, CORRECT?
A. CORRECT.
Q. CELL PHONE?
A. YES.
Q. DAUGHTER'S BIKE?
A. THAT WAS ON THE BALCONY.
Q. BUT THAT WAS TAKEN?
A. OFF THE BALCONY, AND CLOTHES OUT OF THE HOME.
Q. I'M SORRY?
A. CHILDREN'S CLOTHES OUT OF THE HOME, AND THE BIKE WAS TAKEN OFF THE BALCONY.
Q. SO CLOTHES, A BIKE, AND --
A. CHECKS, AND A CELL PHONE.
Q. ALL TAKEN, CORRECT?
A. CORRECT.
Q. ALL RIGHT. WHAT PROOF DID YOU HAVE THAT THE UPSTAIRS NEIGHBORS, THE KNOXES, TOOK YOUR STUFF?
A. PRIORS.
Q. THEY'VE TAKEN YOUR THINGS BEFORE AND ADMITTED IT TO YOU?
A. THE PEOPLE THAT THEY HAD IN THEIR HOME HAVE.

Q. NO. LISTEN TO THE QUESTION, OKAY? WHAT EVIDENCE DO YOU HAVE THAT THE KNOXES TOOK YOUR THINGS ON THIS PARTICULAR DAY?

A. I REALLY DON'T UNDERSTAND YOUR QUESTION.

Q. OKAY. DID MR. KNOX LEAVE HIS WALLET BEHIND WHEN HE TOOK THINGS FROM YOUR APARTMENT? I'M LOOKING FOR WHAT TYPE OF PROOF DID YOU HAVE THAT THE KNOXES BROKE IN. DID THEY LEAVE THEIR FINGERPRINTS? DID THEY LEAVE A WALLET? DID THEY LEAVE SOME SORT OF EVIDENCE THAT WOULD LEAD YOU TO BELIEVE THAT THEY BROKE INTO YOUR APARTMENT?

A. WELL, YOU SAID WHAT LED ME UP THERE TO SAY THAT THEY HAD TOOK SOMETHING OUT OF MY HOME.

Q. EVENTUALLY YOU GOT TO THE POINT WHERE YOU GRABBED A SHOTGUN AND WALKED UP TO THE KNOXES, CORRECT?

A. THE KNOXES HAD PRIOR ROOMMATES THAT HAVE TOOK OFF MY BALCONY AND OUT OF MY HOME PRIOR TO THIS, AND THAT WOULD LEAD ME TO THINK THEY HAD DONE IT AGAIN BECAUSE THEY WERE MOVING AND DIDN'T CARE.

MR. LINK: OBJECTION. NONRESPONSIVE. MOVE TO STRIKE.

THE COURT: OVERRULED.

BY MR. LINK:

Q. AT SOME POINT, YOU GET ANGRY ENOUGH TO WALK UP TO THE KNOXES' APARTMENT WITH THE SHOTGUN, CORRECT?

A. INCORRECT. I WASN'T ANGRY. I WAS MORE LIKE TRYING TO RETRIEVE MY PROPERTY.

Q. SO YOU WEREN'T ANGRY?

A. I WASN'T ANGRY UNTIL I WAS CALLED A BUNCH OF

NIGGERS AND ALL THAT.

Q. SO YOU WERE ANGRY?

A. NOT ON THE TRAIL THERE, NO.

Q. SOMEBODY JUST BROKE INTO YOUR PLACE.

A. NO, BECAUSE I COULDN'T REALLY ACCUSE THEM OF DOING IT. I JUST HAD TO GO FIND OUT IF THEY DID IT OR NOT, OR IF THEY KNEW ANYTHING. AND AFTER I WENT UP THERE, AND AFTER THE RESPONSES I WAS GETTING --

Q. SOMEBODY BROKE INTO YOUR PLACE.

A. RIGHT.

Q. OKAY. THAT DIDN'T MAKE YOU HAPPY, DID IT?

A. I MEAN, I WASN'T BUSTING WITH JOY.

Q. NO, YOU WERE MAD, WEREN'T YOU?

A. NO, I WASN'T MAD. I WAS MORE LIKE WANTING TO RECOVER THE PROPERTY.

Q. YOU WEREN'T MAD THAT SOMEBODY BROKE INTO YOUR PLACE AND STOLE YOUR DAUGHTER'S BIKE?

A. I WAS MORE BAFFLED THAN ANYTHING.

Q. MORE BAFFLED?

A. YEAH.

Q. WHEN YOU WENT UPSTAIRS WITH THE SHOTGUN, IS IT FAIR TO SAY THAT YOU WERE ANGRY?

A. NO, IT'S NOT FAIR TO SAY THAT.

Q. YOU SAID, THOUGH, THAT THE KNOXES WERE YELLING THINGS AT YOU, CORRECT?

A. THAT WAS AFTER I HAD ASKED ABOUT MY PROPERTY.

Q. THAT'S AFTER YOU LEFT THEIR APARTMENT WITH A SHOTGUN, CORRECT?

A. I DID NEVER GO OUT. AFTER I LEFT THEIR DWELLING, THAT'S WHEN THEY STARTED CUSSING AND CALLING ME OUT OF MY NAME.

Q. AT WHAT TIME DID YOU CALL THE POLICE?

A. WELL, I DIDN'T CALL THE POLICE. SHE SNATCHED THE PHONE OUT OF MY HAND.

Q. YOU TRIED TO CALL THE POLICE?

A. WITH HER PHONE.

Q. DO YOU HAVE A PHONE IN YOUR APARTMENT?

A. NO, I DON'T.

Q. ALL RIGHT. IS THERE A PHONE NEARBY, A PAY PHONE?

A. AT THE -- I'D SAY ABOUT A FEW BLOCKS AWAY.

Q. WHAT ABOUT IN THE MANAGER'S OFFICE?

A. IT WAS A SUNDAY. THE MANAGER'S OFFICER IS CLOSED.

Q. OKAY. ONCE AGAIN, LET'S GO BACK TO, WHAT PROOF DID YOU HAVE THAT THE KNOXES, OR MR. CASTRO, TOOK THINGS FROM YOUR APARTMENT ON THAT DAY, NOT BECAUSE OF PRIORS, ON THAT PARTICULAR DAY?

A. WELL, LET ME PUT IT LIKE THIS, SIR. I KNOW THAT SHE HAD DEFRAUDED MY BANK ACCOUNT. I KNOW THAT THEY HAD TOOK THINGS PRIOR TO THAT.

Q. THAT DAY.

A. NO, NOT THAT DAY. PRIOR TO THAT DAY.

Q. WE'RE TALKING ABOUT THE 12TH.

A. THAT'S WHY I WAS JUST MORE INVESTIGATIVELY ASSUMING. I NEEDED ANSWERS THAT WOULD BRING ME UP THERE.

Q. OKAY. WE CAN'T SPECULATE IN THIS COURTROOM. DID YOU SEE THE KNOXES AROUND?

A. NO, I'M NOT DOING IT IN THE COURTROOM. I WAS DOING IT AT THEIR HOME AT THAT POINT IN TIME.
Q. DID YOU SEE THE KNOXES AT YOUR APARTMENT IN THE MORNING?
A. I SEEN THEM IN THE AREA IN THE MORNING.
Q. ALL RIGHT.
A. HANGING OUT IN THE FRONT, THEM AND OTHERS.
Q. DID YOU SEE THEM IN YOUR APARTMENT?
A. NOT IN MY APARTMENT, BUT IN FRONT OF MY APARTMENT.
Q. ALL RIGHT. WHAT PHYSICAL EVIDENCE DO YOU HAVE THAT THE KNOXES TOOK YOUR THINGS?
A. NONE, SIR.
Q. NONE. BUT YOU MADE THE DECISION TO GRAB A SHOTGUN AND TO WALK UP AND CONFRONT THE KNOXES, ACCORDING TO YOUR STORY?
A. THE DECISION I MADE WAS TO PROTECT MYSELF FROM FURTHER INCIDENTS.
Q. ALL RIGHT. WELL, LET'S TALK ABOUT THAT. DID THE KNOXES COME DOWNSTAIRS TO YOUR APARTMENT AND THREATEN YOU?
A. NO, THEY DID IT FROM THE BALCONY.
Q. OKAY. THEY WERE THREATENING YOU FROM THE BALCONY?
A. YES.
Q. THEY WERE TEASING YOU?
A. CALLING ME OUT OF MY NAME AND CALLING ME SNITCHES, JUST PUTTING ME ON BLAST OUT THERE, GIVING ME BLACK EYES, PER SE.
Q. THEY WERE YELLING AT YOU FOR NO REASON JUST BECAUSE THEY SAW YOU?

A. THEY WERE YELLING AT ME BECAUSE THEY WERE SCORING. THEY THOUGHT I BLEW THE WHISTLE ON THEM ABOUT THEIR ACTIVITIES. SO IT WAS MORE OR LESS A PAY BACK.

Q. SO YOU COME BACK HOME TO YOUR APARTMENT, YOU FIND IT'S BEEN BROKEN INTO, CORRECT?

A. YES, SIR.

Q. THEN THE NEXT THING YOU KNOW, THE KNOXES ARE YELLING AT YOU FOR NO PARTICULAR REASON?

A. WOULD YOU LIKE TO KNOW WHAT THEY WERE YELLING?

Q. WELL, DID YOU GIVE THEM ANY REASON ON THAT DAY FOR THEM TO BE YELLING AT YOU ON THAT DAY?

A. I CAN'T REALLY SAY BECAUSE THEY'RE ALWAYS YELLING.

Q. YOU WERE TAKING A SHOTGUN UPSTAIRS TO RETRIEVE YOUR CELL PHONE AND CLOTHES AND CHECKBOOK; IS THAT CORRECT?

A. NO, I WAS TAKING IT UP THERE TO MAKE SURE NOBODY HIT ME IN THE HEAD WITH A BAT.

Q. DID MR. -- SO MR. KNOX NEVER HAD A GUN?

A. WELL, I DON'T KNOW WHAT HE WAS PACKING OUT OF HIS ROOM WITH.

Q. BUT HE'S NEVER THREATENED YOU WITH A GUN?

A. HE'S THREATENED TO KILL ME.

Q. CAN YOU LISTEN TO THE QUESTION. DID HE EVER THREATEN YOU WITH A GUN? IT'S A YES OR NO QUESTION.

A. YES.

Q. OKAY. DID YOU JUST THINK OF THAT?

A. NO, I WAS TRYING TO ANSWER THE QUESTION TO THE BEST OF MY ABILITY.

Q. OKAY. DID HE ACTUALLY PUT A GUN IN YOUR FACE AND

THREATEN YOU?
A. THAT DAY?
Q. I'LL MOVE ON. YOU HAD A PRIOR INCIDENT, ACCORDING TO YOUR STORY, WITH MR. KNOX TWO MONTHS AGO WITH A BASEBALL BAT, CORRECT, TWO MONTHS PRIOR TO THIS INCIDENT, CORRECT?
A. COULD YOU REPEAT THE QUESTION.
Q. YOU JUST TESTIFIED THAT TWO MONTHS PRIOR TO THIS INCIDENT, MR. KNOX THREATENED YOU WITH A BASEBALL BAT?
A. YES.
Q. OKAY. AND YOU THOUGHT IN YOUR OWN MIND THIS TIME AROUND THAT HE WAS GOING TO HAVE THAT BASEBALL BAT AGAIN, CORRECT?
A. THIS -- I WASN'T REALLY FOCUSED ON MR. KNOX. I WAS FOCUSED ON HIS COMPANY AND OTHERS.
Q. WELL, THAT'S WHY YOU BROUGHT THE SHOTGUN UP?
A. FOR PROTECTION.
Q. FOR PROTECTION FROM A BASEBALL BAT?
A. AND THE OTHER PEOPLE THAT WAS AT HIS HOME THAT WAS MAKING THREATS.
Q. JOSE CASTRO, THAT WAS ONE OF THE PEOPLE THAT WAS AT THE HOME. I'M NOT SAYING HE WAS MAKING THREATS TO YOU, BUT HE WAS ONE OF THE PEOPLE AT THE HOME, CORRECT?
A. JOSE WAS CLEANING UP THE HOUSE.
Q. SO HE WAS THERE?
A. HE WAS CLEANING UP THE HOUSE. THERE WAS OTHER PEOPLE IN THERE THAT WAS THREATENING.
Q. JOSE CASTRO WAS AT HIS HOUSE, CORRECT?
A. YES, HE WAS CLEANING. HE WAS NOT SHOUTING, BUT HE

WASN'T NO THREAT.

Q. HE WAS AT THE HOUSE? THAT'S A YES, RIGHT?

A. YES.

Q. SIR, YOU'RE A PRETTY BIG GUY. YOU'RE ABOUT, WHAT, 6 FOOT, 230?

A. I'M 6 FOOT 1, 257 POUNDS.

Q. PRETTY BIG GUY, AREN'T YOU?

A. AVERAGE.

Q. YOU SAW MR. CASTRO UP ON THE STAND, CORRECT?

A. YEAH.

Q. YEAH. HE'S A PRETTY SMALL GUY?

A. YEAH.

Q. WAS HE ONE OF THOSE PEOPLE UP IN THE APARTMENT YELLING?

A. HE WAS MOSTLY CORRALLING EVERYBODY ON THE STAIRS. HE DIDN'T WANT NOTHING TO DO WITH THE ACTIVITY. HE WAS CLOSING THEM OUT.

Q. THE ONLY EVIDENCE WE HAVE OF OTHER PEOPLE IN THE APARTMENT ARE MR. CASTRO, MS. KNOX, AND MR. KNOX, CORRECT?

MR. GULLEY: OBJECTION.

THE COURT: OVERRULED.

THE WITNESS: WELL, I CAN'T -- MS. KNOX, SHE SAID YESTERDAY SHE HAD OTHER FRIENDS OVER AND TRAFFIC.

BY MR. LINK:

Q. NOT ON THIS PARTICULAR DAY?

A. SHE SAID TRAFFIC, SO THEY CAN COME ANYTIME.

Q. OKAY. HOW MANY PEOPLE WERE UP ON THIS BALCONY YELLING AT YOU?

A. IT WAS TWO MALES AND TWO FEMALES.
Q. WHO WAS THE OTHER FEMALE?
A. A FRIEND OF THE KNOXES.
Q. HOW DO YOU KNOW THAT?
A. SHE WAS LIVING WITH THEM.
Q. LET'S BACK IT UP A LITTLE BIT. IN ORDER TO GET THE SHOTGUN, YOU GOT TO UNLOCK YOUR CHESTER DRAWERS, CORRECT?
A. YOU KEY IN AND KEY OUT, YES.
Q. SO IN ORDER FOR YOU TO GET THE SHOTGUN, YOU ACTUALLY HAD TO MAKE THE DECISION TO UNLOCK YOUR CHEST AND GET THAT PARTICULAR SHOTGUN OUT, CORRECT?
A. YEAH.
Q. OKAY. AND YOU LOADED IT?
A. I DIDN'T LOAD THE SHOTGUN.
Q. YOU CHAMBERED A ROUND?
A. I DIDN'T CHAMBER A ROUND EITHER.
Q. THE THREE BULLETS WERE ALREADY IN THERE?
A. EVIDENTLY.
Q. WHO PUT THOSE IN THERE?
A. THAT'S HOW I RECEIVED IT.
Q. THAT'S HOW YOU RECEIVED THE GUN?
A. YEAH.
Q. WITH THREE BULLETS IN IT?
A. YEAH.
Q. AND ONE IN THE CHAMBER?
A. WELL, LIKE I SAY, WHEN I GOT THE GUN, SOMEBODY WAS LOOKING OUT FOR MY PROTECTION BECAUSE THEY KNEW WHAT WAS GOING ON. THEY GAVE IT TO ME FOR MY PROTECTION. I DIDN'T

GET NO DESCRIPTION OR NOTHING ON THE GUN. IT WAS JUST HERE FOR YOUR SAFETY AND YOUR FAMILY'S SAFETY. THAT'S HOW I RECEIVED THE GUN.

Q. WHO GAVE YOU THE GUNS?

MR. GULLEY: OBJECTION, YOUR HONOR.

THE COURT: OVERRULED.

THE WITNESS: WELL, YOU CAN CALL THEM FRIENDS, SOME ASSOCIATES.

BY MR. LINK:

Q. SO FRIENDS DROPPED GUNS AT YOUR HOUSE. DID THEY KNOW YOU WERE A FELON?

A. WELL, I DON'T --

MR. GULLEY: OBJECTION.

THE COURT: SUSTAINED. THAT'S SPECULATION.

BY MR. LINK:

Q. SO YOU HAVE FRIENDS COMING BY AND DROPPING OFF SAWED-OFF SHOTGUNS AT YOUR HOUSE, CORRECT? YES OR NO?

A. IT WASN'T MORE OF -- IT WASN'T A DROP-OFF.

Q. OKAY. HOW WOULD YOU SAY IT? THEY JUST LEFT THEM THERE? THEY GAVE THEM TO YOU? YOU PAID FOR THEM?

A. WE'LL LEAVE THESE HERE IN CASE, YOU KNOW.

Q. YOU NEVER PAID FOR ANY OF THOSE ITEMS?

A. NO, I'M PAYING FOR THEM NOW.

Q. YOU BROUGHT THE SHOTGUN UPSTAIRS, CORRECT?

A. CORRECT.

Q. YOU COCKED A ROUND IN IT?

A. NO, SIR.

Q. YOU JUST HAD IT AT YOUR SIDE?

A. JUST AT MY SIDE.
Q. OKAY. YOU JUST WENT UP THERE WITH A SHOTGUN AT YOUR SIDE AND YOU JUST STOOD IN FRONT OF THE DOOR?
A. YES, SIR.
Q. ALL RIGHT. WHAT DID YOU SAY?
A. I ASKED ABOUT MY PROPERTY.
Q. SO YOU WENT UPSTAIRS WITH A SHOTGUN TO ASK ABOUT YOUR PROPERTY, CORRECT?
A. YEP.
Q. OKAY. JOSE CASTRO WAS IN THE ROOM THERE?
A. JOSE CASTRO WAS WASHING THE DISHES.
Q. DIDN'T YOU THINK AT THAT TIME SINCE YOU HAVE NO BEEF WITH JOSE CASTRO THAT THIS MIGHT SCARE JOSE CASTRO?
A. JOSE CASTRO DIDN'T EVEN SEE THE GUN.
Q. HOW DO YOU KNOW THAT JOSE CASTRO DIDN'T SEE THIS GUN BY YOUR SIDE?
A. EXCUSE ME? BECAUSE THE DOOR -- HE'S IN THE KITCHEN RIGHT HERE, AND THIS IS THE DOOR I CAME IN. I WAS BLOCKED OUT. HIS WHOLE VISION WAS BLOCKED.
Q. HE NEVER WALKED OUT OF THE KITCHEN?
A. NO, HE DIDN'T.
Q. HE STAYED IN THE KITCHEN THE WHOLE TIME YOU WERE ASKING FOR PROPERTY BACK WITH A SHOTGUN BY YOUR SIDE?
A. HE STAYED IN THE KITCHEN WASHING DISHES LIKE HE WAS TOLD TO BY THE KNOXES. AND FROM THERE, THAT'S WHEN THEY GOT TO CALLING NAMES AND THE OTHER GUY -- THEY WERE MAKING THREATS. YOU WOULD HAVE TO HAVE BEEN THERE. FROM THERE I SAW IT GOT A LITTLE HEATED, SO I LEFT.

Q. ONCE AGAIN YOU USED THAT WORD "HEATED." YOU WERE ANGRY?
A. NO, THEY WERE.
Q. THEY WERE ANGRY BUT YOU WEREN'T?
A. LIKE I SAID AGAIN, I WAS BAFFLED AND UPSET WHY THEY WERE CALLING ME ALL THESE NAMES.
Q. SO YOU'RE UPSET?
A. WELL, YOU CAN SEE SAY THAT.
Q. YOU'RE STANDING THERE, YOU'RE UPSET, AND YOU HAVE A SHORT-BARRELED SHOTGUN AT YOUR SIDE, CORRECT?
A. YEAH, I WOULD SAY I WAS UPSET. BUT I WOULDN'T USE THE WORD "ANGRY."
Q. YOU LIKE THE WORD BAFFLED, CORRECT?
A. YEAH. YOU KNOW, I WAS REALLY -- I DIDN'T COME UP IN THERE WITH NO INTENT TO HURT ANYBODY OR ANYTHING LIKE THAT.
Q. YOU LIKE THE WORD BAFFLED BECAUSE IT FITS NICELY WITH YOUR STORY?
MR. GULLEY: OBJECTION, YOUR HONOR. ARGUMENTATIVE.
THE COURT: SUSTAINED. STRICKEN.
BY MR. LINK:
Q. AT WHAT POINT DID YOU TELL THE POLICE THAT PEOPLE HAD STOLEN YOUR ITEMS?
A. THAT ONE WOULD BE KIND OF HARD TO ANSWER THERE BECAUSE THIS WAS LIKE A -- LIKE IF I EVER --
Q. ALL RIGHT. LET ME TRY THIS. YOU HAD AN OPPORTUNITY TO SPEAK WITH THE OFFICERS?
A. I DECLINED.

Q. EXCUSE ME?

A. I DECLINED TO SPEAK TO THEM. AT ONE POINT, THE OFFICER RIGHT HERE KEPT PRESSING ME.

Q. AT SOME POINT YOU SPOKE FREELY WITH THE OFFICERS, CORRECT?

A. I DIDN'T WANT TO TALK TO THEM BECAUSE I ASKED THEM THAT IF I CAN MAKE A PHONE CALL AND LET THE BABY-SITTER KNOW OTHER STUFF TO MAKE ARRANGEMENTS AND FIND -- LET THEM KNOW I WAS -- I WAS BEING DETAINED. SO I DIDN'T WANT TO TALK. I SEEN WHERE I WAS GOING WITH THIS.

Q. AT ONE POINT YOU SPOKE FREELY WITH OFFICERS, CORRECT?

MR. GULLEY: YOUR HONOR, I'M GOING TO OBJECT.

THE COURT: I'M SORRY. THE OBJECTION?

MR. GULLEY: VAGUE AS TO TIME AND --

THE COURT: OVERRULED.

THE WITNESS: OKAY.

BY MR. LINK:

Q. AT SOME POINT, ANYTIME DURING THIS ENTIRE INCIDENT WHEN YOU WERE ARRESTED, AT SOME POINT YOU SPEAK FREELY WITH OFFICERS?

MR. GULLEY: OBJECTION AS TO OFFICERS.

THE COURT: OVERRULED.

MR. GULLEY: VAGUE.

BY MR. LINK:

Q. GO AHEAD AND ANSWER.

A. NO, I DIDN'T SPEAK DIRECTLY TO THEM, NO.

Q. YOU WERE JUST SPEAKING OUT LOUD?

A. YEAH, YOU CAN SAY THAT, YEAH.

Q. AND YOU TOLD THEM, "SOMEBODY STOLE MY CELL PHONE. SOMEBODY STOLE MY STUFF," RIGHT AWAY, RIGHT?

A. NO. WHAT I WAS DOING WAS I WAS GLOATING TO MYSELF ABOUT IT. I DIDN'T SAY NOTHING TO THEM.

MR. LINK: OBJECTION. NONRESPONSIVE.

THE COURT: SUSTAINED. STRICKEN.

BY MR. LINK:

Q. YOU DIDN'T THINK YOU DID ANYTHING WRONG, DID YOU, WELL, BESIDES POSSESSING A FIREARM AS A FELON, RIGHT?

A. THE ONLY THING I CAN SAY I DONE WRONG THAT NIGHT WAS I SHOULD HAVE WENT A LITTLE MORE -- TOOK A LITTLE MORE EFFORT AND WENT AND CALLED THE COPS ON MY OWN. BUT I DIDN'T WANT THEM TO GET AWAY WITH MY MERCHANDISE BECAUSE THEY WERE SADDLING UP TO LEAVE. THE ONLY THING I DID WRONG WAS BE IN A POSSESSION OF A FIREARM.

Q. WHY DID YOU GET IN YOUR TRUCK AND FLEE?

A. BECAUSE THAT WAS THE BEST JUDGMENT THAT COULD HAVE HAPPENED TO ME THAT NIGHT.

Q. YOU THOUGHT IT WAS GOOD JUDGMENT TO TAKE YOUR SHOTGUN, PUT IT IN YOUR PASSENGER SEAT AND DRIVE AWAY AND START RUNNING RED LIGHTS?

MR. GULLEY: OBJECTION, YOUR HONOR.

THE COURT: IT'S A COMPOUND QUESTION. STRICKEN.

MR. LINK: THANK YOU. I'LL REPHRASE.

THE WITNESS: I DIDN'T --

THE COURT: JUST A MOMENT. YOU DON'T HAVE TO ANSWER. NEXT QUESTION.

BY MR. LINK:

Q. YOU THOUGHT IT WAS GOOD JUDGMENT TO GET IN YOUR CAR AND PUT YOUR SHOTGUN IN IT?

A. YES.

Q. YES?

A. YES.

Q. YOU THOUGHT IT WAS GOOD JUDGMENT TO GET IN YOUR CAR AND DRIVE AWAY?

A. TO SAFER GROUNDS, YES.

Q. YOU THOUGHT -- SAFER GROUNDS? WAS SOMEBODY THREATENING YOU?

A. WELL, I DON'T HAVE TO WORRY ABOUT THE THREATS.

Q. WHO'S THE ONE WITH THE SHOTGUN HERE?

MR. GULLEY: OBJECTION. ARGUMENTATIVE.

THE COURT: OVERRULED.

BY MR. LINK:

Q. WHO'S THE ONE WITH THE SHOTGUN?

A. WELL, I GOT THE SHOTGUN, BUT WHAT IF I WOULD HAVE SHOT SOMEBODY? SO ALL I WAS DOING WAS PROTECTING MYSELF, AND I GOT IN HARMS WAY.

Q. SIR, THE ONLY SHOTGUN WE'VE HEARD ABOUT IS IN YOUR HANDS. HOW ARE YOU IN DANGER?

A. WELL, I KNOW OF PEOPLE THAT HAVE BEEN KILLED WITH BATS, TOO.

Q. WOULD YOU TAKE A BAT OVER A SHOTGUN IN A FIGHT?

MR. GULLEY: OBJECTION, YOUR HONOR.

THE COURT: SUSTAINED. STRICKEN.

//

BY MR. LINK:

Q. YOU DON'T KNOW MR. CASTRO, CORRECT?

A. PERSONALLY I DON'T KNOW HIM.

Q. YOU HEARD HIM TESTIFY THAT HE DOESN'T KNOW YOU, RIGHT? CORRECT? YOU WERE SITTING RIGHT HERE.

A. YES, I WAS. BUT WE DON'T -- WELL, HAS HE EVER SEEN ME BEFORE? WOULD DO YOU MEAN? HAVE WE EVER MET?

Q. FAIR ENOUGH. LET ME REPHRASE THAT.

MR. CASTRO NEVER HAD A BEEF WITH YOU?

A. WE NEVER MET EACH OTHER.

Q. OKAY. YOU NEVER MET EACH OTHER. YOU DIDN'T KNOW HIM, HE DIDN'T KNOW YOU.

A. TO MY KNOWLEDGE HE DIDN'T KNOW ME.

Q. AND YOU DIDN'T HAVE A BEEF WITH HIM, DID YOU?

A. NO, SIR.

Q. AND YOU HEARD HIM SAY THAT HE HAD NO BEEF WITH YOU?

A. I DIDN'T HEAR THAT PART.

Q. YOU THINK THAT MR. CASTRO HAS A BEEF WITH YOU?

A. NO, I JUST DIDN'T HEAR THAT. I DON'T KNOW WHAT HE HAS.

Q. OKAY. SO YOU NEVER ACTUALLY HEARD THAT PART, CORRECT?

A. I DIDN'T HEAR THAT PART.

Q. BUT YOU SAT HERE AND YOU LISTENED TO MR. CASTRO TELL THE JURY THAT YOU PUT A SHOTGUN UP TO HIS NECK AND SHOVE HIM AGAINST THE WALL?

A. YEAH, I HEARD THAT PART.

Q. YOU THINK HE MADE THAT UP?

A. I KNOW HE MADE IT UP.

Q. EVEN THOUGH HE HAS NO REASON TO BE MAD AT YOU? HE JUST CAME HERE OUT OF THE BLUE AND MADE UP AN INTRICATE STORY OF YOU PUTTING A SHOTGUN UP TO HIS NECK ACCUSING -- AFTER YOU ACCUSED HIM OF STEALING A CELL PHONE?

MR. GULLEY: OBJECTION, YOUR HONOR, ON INTRICATE STORY, AND THE OTHER COMPOUND, ARGUMENTATIVE.

THE COURT: OVERRULED.

MR. GULLEY: CALLS FOR SPECULATION.

BY MR. LINK:

Q. YOU MAY ANSWER.

A. ASK ME THAT QUESTION ONE MORE TIME.

Q. SURE. I DON'T KNOW IF IT WILL BE EXACTLY THE SAME. BUT YOU THINK MR. CASTRO CAME IN HERE, MADE UP SOME INTRICATE STORY, EVEN THOUGH HE HAS NO BEEF WITH YOU, ABOUT HOW YOU ACCUSED HIM OF STEALING A CELL PHONE, AND THAT YOU PUT A SHOTGUN UP TO HIS NECK AND ESSENTIALLY ASSAULTED HIM BY PUSHING HIM UP AGAINST THE WALL?

A. WELL, I'M GOING TO LET THE JURY HANDLE SOME OF THAT. BUT I CAN TELL YOU THIS RIGHT HERE. I KNOW REBECCA HAD SOMETHING TO DO WITH THAT.

Q. THE QUESTION WAS ABOUT MR. CASTRO.

A. AND THAT'S THE BEST I CAN ANSWER IT BECAUSE HE WAS TOLD TO SAY THAT, AND I'LL LET THE EVIDENCE WEIGH THAT OUT.

Q. SO HE MADE ALL THIS UP TO FOR THE POLICE?

A. YES, HE DID, SIR.

Q. AND HE CAME IN HERE ON DIFFERENT HEARINGS AND HE GAVE THE SAME STATEMENT?

MR. GULLEY: OBJECTION, YOUR HONOR.

THE COURT: THERE'S NO EVIDENCE OF THAT. SUSTAINED.

BY MR. LINK:

Q. DO YOU KNOW THE PURPOSE OF HAVING A SAWED-OFF SHOTGUN? PART OF THE PURPOSE IS TO MAKE SURE YOU CAN BE ABLE TO CONCEAL IT?

MR. GULLEY: OBJECTION.

THE COURT: JUST A MOMENT. OVERRULED. YOU CAN ANSWER THAT.

THE WITNESS: YOU HAVE TO SAY THAT AGAIN, SIR.

BY MR. LINK:

Q. SURE. PART OF THE PURPOSE OF HAVING A SAWED-OFF SHOTGUN IS SO YOU CAN CONCEAL IT, CORRECT?

A. PART OF HAVING A SAWED -- CAN I JUST --

Q. I'LL BREAK IT DOWN FOR YOU. THAT'S A SAWED-OFF SHOTGUN.

A. YES.

Q. AND I'M POINTING AT PEOPLE'S NUMBER 3.

A. YES.

Q. ALL RIGHT. THAT'S NOT THE SIZE OF A NORMAL SHOTGUN, CORRECT?

A. NO.

Q. OKAY. PART OF THE REASON FOR HAVING A SHOTGUN OF THAT SIZE IS TO BE ABLE TO CONCEAL IT EITHER IN A CAR OR IN A COAT?

A. I WOULDN'T SAY WHAT THE PURPOSE OF HAVING THOSE IS. I COULDN'T REALLY ANSWER THAT QUESTION.

Q. YOU WOULDN'T KNOW BECAUSE SOMEBODY JUST GAVE IT TO YOU, RIGHT?
A. ARE YOU ASKING ME A QUESTION?
Q. I ASKED YOU. I'M WAITING FOR AN ANSWER.
A. OH. SOMEONE GAVE ME THOSE, YES.
Q. WE WERE TALKING ABOUT GOOD JUDGMENT. I THINK I STOPPED ABOUT YOU DRIVING AWAY IN YOUR CAR. DID YOU THINK IT WAS GOOD JUDGMENT TO RUN A RED LIGHT?
A. I DIDN'T RUN A RED LIGHT.
Q. I'M SORRY?
A. TO MY KNOWLEDGE THE LIGHT WAS YELLOW.
Q. BUT YOU HEARD THE OFFER TESTIFY THAT IT WAS RED?
A. YES.
Q. CORRECT?
A. THAT'S CORRECT.
Q. AND YOU WENT THROUGH A YELLOW LIGHT AND YOU HAD A SHOTGUN IN YOUR PASSENGER SEAT, CORRECT?
A. CORRECT, ON THE FLOOR.
Q. IS IT FAIR TO SAY YOU WEREN'T IN YOUR RIGHT STATE OF MIND THAT NIGHT, CORRECT?
A. I HAD A BAD MOMENT, AND FROM THERE I WAS GETTING OUT OF THAT MOMENT.
Q. ALL RIGHT. YOU HAD A BAD MOMENT, DIDN'T YOU?
A. YES.
Q. OKAY. YOU WERE BAFFLED, CORRECT?
A. YEAH.
Q. YOU HAD BEEN DRINKING, CORRECT?
A. HAD I BEEN DRINKING?

MR. GULLEY: OBJECTION, YOUR HONOR. FACTS ARE NOT IN EVIDENCE.

THE COURT: OVERRULED. CROSS-EXAMINATION.

BY MR. LINK:

Q. YOU HAD BEEN DRINKING, HADN'T YOU?

A. I HAD A BEER.

Q. YOU ENDED UP BLOWING A .13 THAT NIGHT, DIDN'T YOU?

MR. GULLEY: OBJECTION.

THE COURT: THE OBJECTION IS SUSTAINED. THERE'S NO EVIDENCE OF THAT. YOU CAN ASK HIM IF HE KNOWS.

BY MR. LINK:

Q. DO YOU KNOW WHAT YOU BLEW THAT NIGHT?

A. I KNOW I HAD A BEER. I DRANK A BEER. I KNOW A BEER IS POINT, WHAT HAVE YOU. AND IF THAT'S WHAT YOU'RE GOING ON, YES, I DRANK A BEER THAT NIGHT.

Q. SIR, DO YOU KNOW WHAT YOU BLEW THAT NIGHT?

A. NO, I DON'T KNOW WHAT I BLEW THAT NIGHT.

Q. YOU HAVEN'T READ THE POLICE REPORTS?

A. NO.

Q. YOU HAVEN'T READ THE POLICE REPORTS AT ALL?

A. I SEEN A LOT OF PARTS. I'M NOT FAMILIAR. YOU HAVE TO WALK ME THROUGH THAT.

Q. OKAY. AT SOME POINT THEY GAVE YOU -- THE POLICE OFFICER GAVE YOU SOME SORT OF DUI EXAMINATION. DO YOU KNOW ABOUT THAT?

MR. GULLEY: I WOULD OBJECT AT THIS TIME.

THE COURT: OVERRULED.

THE WITNESS: WELL, I CAN'T SAY THAT I WAS DRUNK OR